

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION



-----x  
:  
LA UNION DEL PUEBLO :  
ENTERO, et al. :  
:  
Plaintiffs :  
:  
vs. : No. B:08-487 (HGT)  
:  
FEDERAL EMERGENCY : Civil Action  
MANAGEMENT AGENCY :  
:  
Defendant :  
:  
-----x

Washington, D.C.  
September 6, 2012

Deposition of:

JOHN M. CARLETON, JR.,  
called for oral examination by counsel for  
Plaintiffs, pursuant to notice, held at the  
offices of the U.S. Department of Justice, 20  
Massachusetts Avenue, N.W., Washington, D.C.,,  
beginning at 9:22 a.m., before Lynell C.S.  
Abbott, a Notary Public in and for the  
District of Columbia, when were present on

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C O N T E N T S

WITNESS: JOHN M. CARLETON, JR.

EXAMINATION BY:	PAGE
MR. WESEVICH	4
MS. WELLS	295

EXHIBITS

DEPOSITION NO.	MARKED FOR IDENTIFICATION
1. CD	13

1  
2 Whereupon,

3 JOHN M. CARLETON, JR.  
4 was called for examination by counsel and,  
5 having been duly sworn by the Notary, was  
6 examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR PLAINTIFFS

8 BY MR. WESEVICH:

9 Q. Good morning, Mr. Carleton. My  
10 name is Jerry Wesevich, and I represent the  
11 Plaintiffs who filed a lawsuit against FEMA.  
12 And we served a Rule 30(b)(6) notice on you.

13 As I understand, you are the  
14 person designated to testify on behalf of  
15 FEMA.

16 A. That's correct.

17 Q. And have you ever given a  
18 deposition before?

19 A. I have not.

20 Q. And one of the rules is that when  
21 I ask a question, our court reporter needs to  
22 be able to record what I say and what you say.

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1       So it's kind of important that we not talk  
2       over one another. I'll do my best not to talk  
3       over you, and please try to do that. Okay?

4             A.       Yes.

5             Q.       And another one of the rules is  
6       that we have to have verbal answers. A shake  
7       of the head doesn't really work.

8             A.       Okay.

9             Q.       We've got to have verbal answers.

10            A.       Yes.

11            Q.       And the most important thing in  
12       the deposition is that if you don't understand  
13       one of my questions, if it's not clear to you,  
14       will you please tell me so that I can try to  
15       clarify it for you?

16            A.       Yes.

17            Q.       And if you want to take a break at  
18       any time, you're welcome to do that. Simply  
19       let us know.

20            A.       Very good.

21            Q.       I will show you a series of  
22       documents during this deposition as I ask you

1 questions. Okay?

2 A. Yes.

3 Q. The documents will have a number  
4 that is in green written on the very bottom of  
5 the screen. The document that you and I are  
6 discussing I will flash up on the screen.

7 A. Okay.

8 Q. If you want to see pages before or  
9 after a document, will you please just let me  
10 know and I'll be happy to change it --

11 A. Yes.

12 Q. -- on the screen?

13 A. Yes.

14 Q. And I understand that you have the  
15 hard copies of the documents with you, and  
16 you're welcome to refer to the hard copies  
17 that you brought with you at any time as well.

18 A. Okay.

19 Q. And of course you understand that  
20 my job is to understand how FEMA conducts its  
21 operations and that no one accuses you  
22 personally of having done anything wrong.

1 Right?

2 A. Yes.

3 Q. You're just here to give the  
4 Agency's testimony about what happened.

5 A. Yes.

6 Q. Could you please describe your  
7 education?

8 A. My education? I have a bachelor's  
9 degree in architectural engineering from  
10 Wentworth, graduated in 1983. I have an  
11 associate's degree in architectural  
12 engineering technology from Wentworth  
13 Institute -- I mean from Roger Williams  
14 College. And that is in Rhode Island. And I  
15 graduated with an associate's degree in 1980.

16 I have been with FEMA for over 21  
17 years, started out as a local hire which is a  
18 person hired in support of a disaster. I  
19 became a full-time FEMA employee in December  
20 of 1992. I have since worked in the areas of  
21 Individual Assistance, Public Assistance,  
22 Mitigation, Operations, and I was originally

1 hired in Region 1. And I've been at FEMA  
2 Headquarters since June of 2007.

3 Q. Are you in the Senior Executive  
4 Service?

5 A. No, I am not.

6 Q. Are you a confirmed appointee?

7 A. No, I am not.

8 Q. Describe to me who is confirmed by  
9 the Senate besides Administrator Fugate.

10 A. There is the Deputy Assistant, the  
11 Deputy Administrator, Richard Serino. There  
12 is Beth Zimmerman who is the Recovery  
13 Assistant Administrator. There is William  
14 Carwile who is another Assistant  
15 Administrator. And there are several others  
16 in my division. They're all career employees,  
17 in other words. My supervisor, who is Mark  
18 Mischak. Then there is Mike Grimm who is my  
19 Division Director. They are career employees.

20 Q. Some of these names have come up  
21 in the documents. Who is Buryl Jones?

22 A. Buryl Jones used to be the



1 Division Director for Individual Assistance.  
2 He is now working out at Mount Weather. Mike  
3 Grimm is now in Buryl Jones' position.

4 Q. And Donna Dannels?

5 A. Donna Dannels. She had retired I  
6 believe in 2008. And she was at the time, I  
7 believe she was Buryl Jones' boss. So I  
8 believe she was like the Associate Director.

9 Q. So she was in the position that  
10 Elizabeth Zimmerman now occupies?

11 A. She's actually in the position  
12 that Deb Ingram occupies. Deb Ingram is  
13 Deputy Associate Administrator for Recovery.

14 Q. Now, you said you had worked in  
15 both Public Assistance and in the Individual  
16 Assistance programs?

17 A. That's correct.

18 Q. And is it fair to say that Public  
19 Assistance provides repair resources for  
20 cities, states, and government entities while  
21 Individual Assistance provides disaster repair  
22 assistance for individual people?

1           A.       Yes, it's fair to say that. In  
2 addition, too, Individual Assistance provides  
3 a variety of other programs under Human  
4 Services which also includes grants to states  
5 for such things as crisis counseling, disaster  
6 case management, and other programs.

7           Q.       Right. But to keep it manageable  
8 in this deposition, we're talking about home  
9 repair unless we say explicitly otherwise.  
10 Right?

11          A.       Yes, correct.

12          Q.       But when it comes to repair of  
13 buildings, the Public Assistance is going to  
14 repair public buildings and the Individual  
15 Assistance program repairs private buildings.

16          A.       That's correct.

17          Q.       Now, Mrs. Zimmerman oversees both  
18 the Public Assistance and the Individual  
19 Assistance programs. Correct?

20          A.       Yes. Yes. She is the Associate  
21 Deputy Administrator for Response and  
22 Recovery. So she oversees the recovery aspect

1       which is both PA, Public Assistance, and  
2       Individual Assistance.

3               Q.       We can say PA for Public  
4       Assistance Program and IA for Individual  
5       Assistance.    Right?

6               A.       Correct.

7               Q.       And those are commonly used within  
8       FEMA?

9               A.       Yes, they are.

10              Q.       And they are basically parallel  
11       administrative structures, the PA Program and  
12       the IA Program.   Right?

13              A.       That is correct.

14              Q.       There is just a separate statute  
15       that governs each of those programs.   Correct?

16              A.       It's under the Stafford Act.  
17       There are different authorities within the  
18       Stafford Act that govern the two different  
19       programs.

20              Q.       Right.   And it's 406 for PA or 42  
21       USC 5172.   Correct?

22              A.       It's Section 403 for the Public

1 Assistance. Section 408 governs the  
2 Individual Assistance.

3 Q. Right. So there are separate  
4 statutes for PA and IA, and then there's a  
5 separate set of regulations underneath each  
6 statute by which PA is administered and by  
7 which IA is administered?

8 A. That is correct.

9 Q. And the IA regulations are 44 CFR  
10 206.110 through 120. Is that correct?

11 A. I believe that is correct.

12 Q. And are there other regulations  
13 besides those that govern IA?

14 A. Not that govern the Individual  
15 Assistance programs. There are other  
16 regulations that govern other type of programs  
17 that assist in Individual Assistance. But for  
18 the sake of the repair program, it is under  
19 Section 206 of the 44 CFR.

20 Q. And there is a whole separate set  
21 of regulations that governs operation of the  
22 PA program. Correct?

1           A.       That is correct.

2           Q.       I am going to show you what's been  
3 marked as Page 5891. And I'm going to go  
4 ahead and as we look at the first document  
5 here, I will ask the court reporter to please  
6 mark as Exhibit Number 1 a CD, a copy of which  
7 has been provided to defense counsel that has  
8 all the documents that we're going to refer to  
9 today.

10                   (Item referred to marked  
11 Deposition Exhibit No. 1 for identification  
12 and subsequently returned to counsel with the  
13 Deposition transcript for his retention.)

14                   BY MR. WESEVICH:

15           Q.       So would you please look at  
16 Document 5891?

17           A.       It's a little blurry. Can it be  
18 sharpened?

19           Q.       Sure, of course. Better?

20           A.       Yes, better.

21                   MS. WELLS: Is it possible for you  
22 to tell us how long this document is in its

1       entirety?

2                   MR. WESEVICH:   It's on FEMA's  
3       website.   It's 57 pages long.   We're not going  
4       through the whole thing, believe me.

5                   THE WITNESS:   Yes.

6                   BY MR. WESEVICH:

7               Q.       Okay.   Can you please look at just  
8       the first paragraph on Page 5892?

9                   MS. WELLS:   The first full  
10       paragraph?

11                  MR. WESEVICH:   Yes, ma'am.

12                  MS. WELLS:   So not the carryover  
13       one at the top of the page.

14                  MR. WESEVICH:   The carryover one,  
15       that's right.

16                  THE WITNESS:   Yes.

17                  BY MR. WESEVICH:

18               Q.       Have you had a chance to look at  
19       that, what's marked on 5891 and 92?

20               A.       Yes, I have.

21               Q.       My question is is IA administered  
22       the same way as this describes PA being

1       administered, generally?

2               A.       Generally, yes.

3               Q.       So there is the statute governs.

4       Underneath that is the regulations.

5       Underneath that is a set of FEMA policies for  
6       how to carry out the program.

7               A.       That is correct.

8               Q.       And the reason that FEMA has that  
9       set of policies interpreting the regulations  
10       is to ensure consistency in decisions of what  
11       repair is going to be provided?

12               MS. WELLS: I'm going to object to  
13       the form of question.

14               You can answer it if you --

15               THE WITNESS: Okay. Yes. It does  
16       set a consistent standard. However, we still  
17       maintain flexibility where we can. There is a  
18       number of different situations that come up on  
19       any given disaster that will need to be  
20       addressed, and typically we will just follow  
21       that policy. But in some instances we would  
22       have to modify that to fit the situation.

1 BY MR. WESEVICH:

2 Q. And who would modify the policies?

3 A. It's usually, it's -- there's any  
4 number of people. It depends on what the  
5 topic is. It depends on how it's to be  
6 determined. It goes through a writing  
7 process, a vetting process, of which there are  
8 a number of people that look at it. And then  
9 it goes to a concurrence process. So  
10 depending upon the document, it could be  
11 modified either by, for instance, Beth  
12 Zimmerman or Deb Ingram.

13 Q. But as to PA, this Document 5892  
14 says that FEMA issues policies so that the  
15 regulations are interpreted consistently  
16 across the nation and from disaster to  
17 disaster.

18 A. That is correct.

19 Q. And does FEMA do the same thing  
20 for IA?

21 A. That is correct.

22 Q. I'll show you Document 29. Would



1       you please have a look at that.

2               A.       Yes.

3               Q.       Have you had a chance to read  
4       Document 29?

5               A.       Yes, I have.

6               Q.       Page 29, I should say. What is  
7       it?

8               A.       That is a policy. It is  
9       establishing a policy for the minimal amount  
10       of award to be assisted for habitability  
11       items.

12              Q.       This is a FEMA policy that applies  
13       in IA. Correct?

14              A.       Yes, and it's dated July of 2005.

15              Q.       And this policy states an  
16       eligibility requirement for home repair  
17       assistance. Correct?

18              A.       It states a minimal amount of  
19       award that could be provided, not necessarily  
20       eligibility for such award. In other words,  
21       it doesn't get into the eligibility  
22       requirements of what that \$50 would stand for.

1 It just simply says that we would not issue  
2 anything less than a \$50 award assistance.

3 Q. If someone was otherwise eligible  
4 for repair assistance and the total amount was  
5 \$40 that they were eligible for based on this  
6 policy would they be deemed ineligible?

7 A. They would not receive assistance,  
8 yes.

9 Q. Does this policy appear in the  
10 Stafford Act, 42 USC 5174?

11 A. No, it does not.

12 Q. Does it appear in any regulation?

13 A. No, it does not.

14 Q. But this is binding on everyone in  
15 FEMA. Correct?

16 A. Yes. This is part of the  
17 processing for which individuals could be  
18 eligible to receive that minimal amount of  
19 award.

20 Q. How did FEMA choose \$50?

21 A. The Stafford Act refers to minor  
22 repair, of which it would be reasonable to

1 expect the applicant at the landlord to make  
2 such minor repairs. This sets the standard of  
3 what would be considered the minimal award.  
4 So it basically sets the threshold for what  
5 that minor repair would indicate on  
6 habitability items. So it is in reference to  
7 setting a standard that is reflective in the  
8 regulations of which it would indicate that  
9 individuals and landlords are expected to make  
10 some repair to minor damage.

11 Q. As I understand your testimony,  
12 you say that the Stafford Act contains the  
13 words "minor repair."

14 A. The regulations stipulate.

15 Q. And we're just going to have to be  
16 very specific about where we are here.

17 A. Okay.

18 Q. So where in the regulations do the  
19 words "minor repair" appear?

20 A. I would have to doublecheck that.  
21 I know that it does stipulate in the Code of  
22 Federal Regulations that it is expected that

1 the landlord or the owner would make repairs.  
2 I believe it says minor repairs or minimal  
3 repairs. I would have to actually look at the  
4 regulation to verify the words.

5 Q. So as I understand your testimony,  
6 FEMA's decision to use \$50 as a numeric  
7 standard is an interpretation of the word  
8 "minor repairs" that appears somewhere in the  
9 regulations.

10 A. It's an interpretation of the  
11 language that appears in the 44 CFR,  
12 indicating that it is expected that the  
13 homeowner or the landlord can make minor  
14 repairs. I don't know if -- I would have to  
15 determine whether or not actual minor repairs  
16 is identified. I do know that in -- it's  
17 either "minor repairs" or "minimal repairs" is  
18 used.

19 Q. Let's see if I can help you with  
20 that. I'm showing you Page 5004. This is a  
21 document that FEMA produced and filed in Court  
22 as Document 78-7. And it's a 108-page

1        PowerPoint.

2                    Do you recall this document?

3            A.        Yes, I do.

4            Q.        Describe it.

5            A.        I believe this is the information  
6 material used in the training for the FEMA  
7 contract inspectors.

8            Q.        Who wrote it?

9            A.        I do not know. I believe it was  
10 probably developed out at the Virginia NPSC of  
11 which that is where the inspection services  
12 manager and it's all coordinated through the  
13 Virginia NPSC. I don't know who the author of  
14 this particular document is.

15            Q.        Now, just to clarify on the  
16 hierarchy here, because there was a hierarchy  
17 document that was produced but it was so small  
18 we couldn't read it. But the policy at FEMA  
19 as to what repair assistance will be provided  
20 is made only at Headquarters. Correct?

21            A.        From the regulation it describes  
22 what damages would be eligible and describes a

1 whole host of what could be determined  
2 eligible. The policy is written from FEMA  
3 Headquarters in terms of any direction or  
4 clarification required in the regulation. And  
5 then the NPSC is responsible for processing  
6 based upon policy and guidance and basically  
7 just processing.

8 Q. Is it fair to say that there are  
9 four physical locations for FEMA, Number 1  
10 being Headquarters here in D.C., Number 2  
11 being the NPSCs -- which are the N-P-S-Cs --  
12 and there are several of them around the  
13 nation. There is one in Denton, Texas, and  
14 there is one in Virginia, and I believe there  
15 was one in Puerto Rico or something like that.

16 A. The Puerto Rico NPSC closed.  
17 There's also one in Maryland.

18 Q. Then there is the regional offices  
19 of FEMA. And then there are the disaster  
20 sites where FEMA maintains temporary offices  
21 at disaster sites.

22 A. That is correct.

1           Q.     And is that accurate that there  
2           are basically four locations where FEMA does  
3           business and those are them?

4           A.     In addition to those, in a  
5           disaster site we'll also establish disaster  
6           recovery centers or disaster joint recovery  
7           centers with a state of which we would then  
8           set up temporary offices during a disaster for  
9           people to come in and apply and get answers to  
10          their questions and also meet with other state  
11          and local agencies that offer assistance in  
12          the recovery effort. And that, too, is a very  
13          temporary office that's established through  
14          the joint field office, established for that  
15          disaster.

16          Q.     So this document that's Page 5004  
17          and forward is a training presentation that  
18          was written by NPSC based on FEMA policy.  
19          Correct?

20          A.     I believe so.

21          Q.     But you just don't know which FEMA  
22          employee at NPSC wrote this document.

1           A.       That's correct.

2           Q.       And this is the training document  
3 that was used to train inspectors who worked  
4 in Disaster 1780. Correct?

5           A.       That is my knowledge, yes.

6           Q.       Please look at Page 5045.

7           A.       Yes.

8           Q.       Is that the regulation that you  
9 were referring to that the \$50 rule that we  
10 previously discussed is based on?

11          A.       Yes, it is.

12          Q.       Is there any other regulation?

13          A.       No. I do not believe there is.

14          Q.       And do you understand that 44 CFR  
15 Section 206.101 is no longer an effective  
16 regulation?

17          A.       Yes. That has been replaced. And  
18 I do not know the new citation, but this was  
19 from the 2002 Code of Federal Regulations.  
20 However, it still applies that minor repairs  
21 of a minor nature may not be considered  
22 eligible for assistance.



1           Q.       So FEMA's \$50 rule -- is that a  
2       fair shorthand way of saying it, the \$50 rule?

3           A.       Yes.

4           Q.       So that \$50 rule is based on an  
5       expired regulation.

6           A.       Yes, according to this Section  
7       206.101.

8           Q.       There is not a new regulation that  
9       is in force right now that says this same  
10      thing. Correct?

11          A.       I do not believe there is. I  
12      would have to verify that.

13          Q.       FEMA produced a lot of policies in  
14      response to our document request about  
15      individual assistance. And I am showing you  
16      one here at Page 29, and then there's another  
17      one here at Page 30.

18          A.       Yes.

19          Q.       I just want to know whether or not  
20      you are familiar with that format that's on  
21      Page 30 for publishing FEMA policies.

22          A.       Yes, I am.

1           Q.       So where you have a DAP number  
2       that is in the 9,400 range, are all of those  
3       FEMA IA policies?

4           A.       I don't know if they all are.  
5       That is a number that is assigned for most  
6       policies. And it's going to vary but I don't  
7       know if it's all within the 9400 range. There  
8       are other policies that are in the 9500 range,  
9       and I don't know how that number is actually  
10      assigned.

11          Q.       Okay. Now, I'm showing you Pages  
12      5951 onward. This lists the 95 series  
13      policies. And they will appear here in the  
14      same, in the same general format with a broad  
15      border around, and they all have a DAP 9521  
16      policy. Correct?

17          A.       Yes. This is the newer format  
18      that I don't know when exactly it was  
19      implemented. But throughout the years there's  
20      been several different formats on policy.

21          Q.       Right. And, again, we're looking  
22      at Pages 5951 onward. We're just scrolling

1 through and we see a lot of these similarly  
2 formatted policies. And these are all in the  
3 9500 range and they're all applied to PA.  
4 Correct?

5 A. I don't know that for sure.

6 Q. So you're not aware that all of  
7 the 9500 policies and beyond are PA policies  
8 and all the 9400 and beyond are all the IA  
9 policies?

10 A. I have never really paid too much  
11 attention to what the policy number is in  
12 terms of whether it's a 9500 or 9400. I do  
13 know that the majority of the policies that  
14 are produced in IA who have the assigned  
15 numbers are the 94. But I do not know if  
16 every one of them is 94.

17 Q. This document designated 5951, I  
18 will represent to you, is all the 9500 series  
19 policies and that they all apply to PA.

20 My question is is there a similar  
21 book that contains all of the 9400 policies in  
22 one place for IA? Because this is a FEMA

1 document on its website --

2 A. Right.

3 Q. -- that has all of the 9500  
4 policies on it.

5 A. Yes.

6 Q. The last one in this document is  
7 on debris monitoring and it's marked 9580.203.

8 A. Yes. Yes. I do not think there  
9 is a concise listing as we see here in Public  
10 Assistance as there is in Individual  
11 Assistance.

12 Q. Just so your testimony is clear,  
13 your understanding is that there isn't as  
14 concise a list of the IA policies as there is  
15 of the PA policies that's reflected in this  
16 document --

17 A. In the way it's reflected in this  
18 document. We have a listing of the policies  
19 but it's not in a concise, one binder type  
20 document. Public Assistance several years ago  
21 did a redevelopment of their entire program to  
22 have a digest and all their policies bound.

1 We are not at that level at this point in  
2 Individual Assistance. Individual Assistance  
3 because it affects individuals, it is  
4 flexible. And we have a lot of issues that  
5 come up of which we would issue guidance or  
6 policy to deal with that particular situation.

7 The numbered policies are  
8 typically policies that go through the entire  
9 vetting process and do go through the Federal  
10 Register notice for comment. There are other  
11 interim policies, draft policies that have to  
12 get implemented for a particular disaster that  
13 are specific to that disaster. And they  
14 typically will not carry the numbers as we see  
15 here.

16 There are several fact sheets.  
17 What I'm looking at now is this 9580.203,  
18 which is a fact sheet. And we do have several  
19 fact sheets for Individual Assistance and  
20 other programs associated with Individual  
21 Assistance that are numbered as well as we  
22 have several policies that are numbered

1 through the proper sequencing.

2 Q. And you're looking at Page 6302 as  
3 you say this.

4 A. Yes, I am.

5 Q. As I understand your testimony,  
6 these numbered policies go through Notice and  
7 Comment and are published in the Federal  
8 Register.

9 A. I am looking at a Public  
10 Assistance one that I believe has been fully  
11 integrated and vetted and through the public  
12 comment period.

13 Q. And is it your testimony that if a  
14 policy appears in this format, this standard  
15 format that FEMA has and it's numbered, it's  
16 been through a formal process and it's been  
17 through Notice and Comment and published in  
18 the Federal Register?

19 A. I believe that is accurate when it  
20 has the number assigned and it's dated. As I  
21 say, with Individual Assistance, there are a  
22 number of policies that get issued that are

1 disaster specific that deal with the  
2 particular issue that came about during that  
3 event. And typically those do not have a full  
4 scope of getting through the Federal Register  
5 Notice and Public Comment period because it's  
6 a situation that has to be addressed at the  
7 time.

8 Q. Let's go back to the -- we are  
9 looking at Page 29 again. This is the \$50  
10 policy that we've been discussing.

11 A. Yes.

12 Q. This does not have a number  
13 assigned to it.

14 A. No, it does not.

15 Q. So that means it has not undergone  
16 Notice and Comment publication. Correct?

17 A. I do not know for sure, but I  
18 don't believe it has.

19 Q. Now, this policy that's on Page 29  
20 is not disaster specific. Correct?

21 A. That is correct.

22 Q. It applies to all disasters.

1           A.       After the date, yes.

2           Q.       Where do we go to find a complete  
3 list of the 9400 series policies for  
4 Individual Assistance?

5           A.       The most complete set is located  
6 on the NPSC website, Virginia NPSC website.  
7 We also have several copies of listings. I  
8 don't know if it's electronically. Over the  
9 past year we are making sure that we are  
10 consistent in building an electronic library  
11 that will list all of the policies.

12          Q.       So this process that you described  
13 earlier where PA policies were more formally  
14 organized in the document that we viewed  
15 earlier, is that same type of a process being  
16 undertaken now as to IA?

17          A.       Electronically, yes. We are  
18 looking to make sure that we are consistently  
19 applying all policies and that they will be  
20 outward facing, in other words, on the  
21 Internet. We have them listed right now on  
22 the Intranet and we are making a concerted



1 effort to make sure that these are outwardly  
2 facing on the Internet.

3 As I mentioned earlier, the Public  
4 Assistance went through what they referred to  
5 as a bottom-up review several years ago and  
6 they reengineered it, and they also came out  
7 with publications on policy digests which we  
8 are not there yet in Individual Assistance.  
9 We would like to undertake a publication that  
10 lists all the policies such as what I was  
11 seeing here earlier for Public Assistance, but  
12 we have not completed that or we have not  
13 engaged in that process yet.

14 Q. Okay. To be clear, what you  
15 completed, when you said what you completed as  
16 to Public Assistance, what you mean is the  
17 document that begins on Page 5951.

18 A. Yeah. I'm not familiar with this  
19 document. I am familiar with the effort that  
20 PA has undergone in terms of consolidating all  
21 of their policies and putting them into a  
22 policy digest.

1           Q.     And when you say outward-looking  
2     Internet as opposed to inward-looking  
3     Intranet, the distinction there is whether  
4     it's available to the public.   Correct?

5           A.     That is correct.

6           Q.     So right now the FEMA IA policies  
7     are not available to the public.

8           A.     As I say, there has been some work  
9     within the past year in getting as many  
10    policies on the Internet as possible.   I  
11    haven't monitored how far along they are.   But  
12    in 2008, I do not believe they were outwardly  
13    facing or on the Internet.

14          Q.     So one form of an IA FEMA policy  
15    that implements regulations is shown on Page  
16    30.   Correct?

17          A.     That's correct.

18          Q.     And another form is shown on Page  
19    29.   Correct?

20          A.     That is correct.

21          Q.     And another form is accompanied by  
22    a memo like on Page 27.   Correct?

1           A.       Well, this is a memorandum and  
2       it's making reference to an interim policy for  
3       insurance and real property losses. So this  
4       is a memo that is simply referring to the  
5       attached interim policy.

6           Q.       Okay. And the attached interim  
7       policy is on Page 26 and it's in the same form  
8       as Page 29. Right?

9           A.       That's correct.

10          Q.       I misspoke when I said 26. I  
11       meant 28.

12          A.       Okay.

13          Q.       Now we're looking at 5154. And  
14       part of that is blacked out at the top, but if  
15       you look carefully you can see words up there  
16       in the very top banner. Again, I'm only  
17       asking whether this is a third form of FEMA  
18       policy besides the memorandum or the numbered  
19       policy.

20          A.       I am not familiar with that  
21       format, and I can't read what is on the top  
22       banner.

1           Q.       Maybe Page 5157 is another  
2       example. And this is something that FEMA  
3       filed in Court as Document 85-2, Page 5.

4           A.       If I could take a look at that,  
5       because I believe this is a processing  
6       guidance. I believe what I'm looking at here  
7       on Page 5157 is actually processing guidance  
8       that has been developed based upon policy. So  
9       this is how the NPSC would process under this  
10      particular heading of appeal processing  
11      guidance, how they would process an appeal.  
12      It is not something that it would have been  
13      issued from Headquarters as policy. It would  
14      have been taken either from the regulations on  
15      the appeal process, and this is how FEMA would  
16      process such appeals.

17          Q.       Okay. So that describes how  
18      policy is taught and used and it does not set  
19      policy. Is that accurate?

20          A.       I believe it does not set policy  
21      and what it does is it establishes how  
22      processing would take place for requesting

1 estimates and receipts for appeal purposes.

2 Q. And that's Document or Page 5157.

3 And this PowerPoint that includes Page 5045  
4 that we discussed earlier, that's another  
5 document in which policy is taught and it does  
6 not set policy.

7 A. It doesn't set policy. What I am  
8 looking at now on Page 5045 is the PowerPoint  
9 on the training on how habitability and minor  
10 repairs are viewed, which is either going to  
11 be based upon the regulation or any clarifying  
12 policy.

13 Q. All right. Let's read Pages 1081  
14 and 1082. Those are the same as the FEMA  
15 Bates numbers.

16 Just for clarity, Ms. Wells, Pages  
17 1 through 4,291 are all the Bates-stamped  
18 documents that FEMA produced. And the page  
19 numbers that I use for the deposition I'm  
20 referring to are identical to those, 1 through  
21 4,291. So that if we talk about a page within  
22 that range, it's the same Bates-stamped pages

1 FEMA has.

2 A. Yes.

3 Q. Have you had a chance to read  
4 Pages 1081 and 1082?

5 A. Yes, I have.

6 Q. Does this indicate that in  
7 addition to the numbered policies and in  
8 addition to the memos that are like the one we  
9 discussed on Page 29, that there are three  
10 additional forms of FEMA policy that have to  
11 be approved by Headquarters and that that  
12 would be the inspection guidelines, the  
13 disaster line items, and the habitability  
14 policy?

15 A. The line items and the Inspection  
16 Services guidelines are typically not approved  
17 by Headquarters. They are reviewed by  
18 Headquarters but typically not approved. We  
19 look for anything that is out of sync or out  
20 of the ordinary that shouldn't belong in  
21 guidelines. They are guidelines to the  
22 inspectors on how to conduct and how to look

1 at the various line items, and it's a  
2 description of the line items that they are  
3 going out and actually physically verifying  
4 for damage.

5 Q. But each of those documents that  
6 you just discussed, there is a template for  
7 each of those documents that's approved by  
8 Headquarters. Correct?

9 A. I am not 100 percent sure about  
10 that. The reason why I say that is because we  
11 produce the policies from Headquarters and  
12 coordinate with the NPSCs on a regular basis.  
13 And they have staff at the NPSC that we do the  
14 coordination with. I am familiar with the  
15 line items and the descriptions of the line  
16 items. I am not familiar that they were  
17 formally approved by Headquarters.

18 Q. So your reading of Documents 1081  
19 and 1082 does not require Headquarters  
20 approval of the guidelines document?

21 A. No. If you turn to 1082, upon  
22 full concurrence, it gives the description and

1       there are several bullets there. And those  
2       individuals reside at the NPSC.

3               Q.       And just so the record is clear,  
4       when the witness says "NPSC," it will appear  
5       as N-P-S-C for National Processing Services  
6       Center.

7               A.       Correct.

8               Q.       So is it accurate to say that if  
9       someone wants to know what the policies are  
10      that are under the regulations, that you have  
11      to look at all of the memoranda like Page 29,  
12      you have to look at all of the numbered  
13      policies that we've discussed, you have to  
14      look at the IHP guidelines, you have to look  
15      at the habitability document, and you have to  
16      look at the line item descriptions.

17              A.       Not all of those are policy. Some  
18      of that is guidance and it's guidance based  
19      upon policy. So not all of those are formal  
20      policy.

21              Q.       How do you distinguish guidance  
22      and guidelines from what you call formal



1 policy?

2 A. It would depend. And I say that  
3 because is it policy written from the  
4 Headquarters level of which the NPSC would  
5 then develop processing guidance based upon  
6 that policy which, again, there is  
7 coordination. If Headquarters issues a policy  
8 to the NPSC that would affect their  
9 processing, it includes many different  
10 individuals going through what effect it would  
11 have on processing. And then the NPSC would  
12 develop guidelines to support the policy  
13 decisions to make sure that it is processed in  
14 accordance with the policy. And those would  
15 be guidelines established for processing at  
16 the NPSC.

17 Similarly, it would also be the  
18 same for Inspection Services. Inspection  
19 Services would write a process to support the  
20 policies or the regulation in terms of getting  
21 it accurate so that it does not create  
22 something that is not supported by the policy

1 or regulation.

2 Q. Would you agree that having all of  
3 these different policies and guidelines and  
4 training manuals creates a possibility of  
5 inconsistencies among them?

6 A. We work very, very hard to make  
7 sure that there aren't any inconsistencies.  
8 As I mentioned, we work consistently with the  
9 NPSCs in terms of if we issue a policy, to  
10 work with them in making sure that the  
11 guidelines are accurately reflective of what  
12 the policy is saying. There are instances  
13 where, we come across during a disaster, where  
14 something isn't being processed correctly, of  
15 which then we may have to modify the guidance  
16 or even some cases policy of which we would  
17 need to be reflective of an accurate direction  
18 either from the 44 CFR or policy.

19 Q. Do the policies change?

20 A. When you say change, are you  
21 talking about sweeping changes or clarifying?

22 Q. For example, we talked about the

1       \$50 limit on Page 29.

2           A.       Yes.

3           Q.       Does it ever change from \$50?

4           A.       No, not for that particular  
5 policy. There may be a revision of that  
6 policy of which a new policy would be issued  
7 and the original policy be rescinded. And I  
8 believe that \$50 one was actually for  
9 processing. It's not something that is --  
10 it's issued to correct or set a limit for  
11 processing.

12                   If we could go back to that  
13 document, I believe it even refers to it's for  
14 processing purposes.

15           Q.       We are looking at Page 29.

16           A.       Page 29, yes. And the purpose is  
17 to establish a national policy concerning the  
18 minimal awards to be provided under the  
19 Individual Assistance programs. And this is  
20 to set a processing minimum, because a lot of  
21 information that is entered into our system of  
22 record, if we do not establish a business rule

1 to say that we would not pay for anything  
2 under \$50, we would be issuing a lot of  
3 assistance below this minimal award, which  
4 prior to this memo we were issuing a lot of  
5 assistance, for instance, for very minor, you  
6 know, elements that fell under \$50.

7 So this here is actually the  
8 policy that is establishing that minimum  
9 threshold for assistance which affects  
10 processing at the NPSC.

11 Q. Is there any language on Page 29  
12 that refers to processing only?

13 A. No, it does not.

14 Q. To your understanding, this rule  
15 was applied in Disaster 1780?

16 A. Yes, I believe it was.

17 MS. WELLS: And I'd just like to  
18 clarify that I'm not so sure that the witness  
19 has testified that this is a rule. I mean,  
20 you know, it's a policy statement. And that's  
21 the way you've been referring to it previously  
22 as well.

1 MR. WESEVICH: And if I'm not  
2 speaking loud enough, please let me know.  
3 I'll be happy to speak up.

4 BY MR. WESEVICH:

5 Q. I want to understand a little bit  
6 about how this \$50 policy works in practice.  
7 If an inspector sees an item that is valued at  
8 less than \$50, are they told not to record it?

9 A. No, they are not. They are to  
10 record all damages that they see.

11 Q. And is the rule implemented as a  
12 business rule in NEMIS? N-E-M-I-S.

13 A. NEMIS. Yes.

14 Q. Thank you.

15 MS. WELLS: Can we just for  
16 clarification identify up front what NEMIS  
17 stands for?

18 THE WITNESS: National Emergency  
19 Management Information System.

20 BY MR. WESEVICH:

21 Q. The way it works as a business  
22 rule is all real property damages are recorded

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1 by the inspector, but if the computer sees the  
2 total damages in a house is under \$50, it  
3 denies assistance. Correct?

4 A. That is correct. And it also  
5 refers to habitability repairs. All damages  
6 are recorded as the inspector views them and  
7 verifies that damage. And then at the end of  
8 reviewing all that damage, the inspector makes  
9 a determination as to whether or not the house  
10 is habitable. So the \$50 is to eliminate some  
11 very minor payments that may or may not have  
12 affected the habitability of the home. And it  
13 is a business rule that is established within  
14 NEMIS.

15 Q. You mentioned habitability. In  
16 this PowerPoint it says that habitability  
17 means a house that's safe, sanitary and  
18 functional. Correct?

19 A. That is correct, and that there is  
20 no disaster-related hazards in determining  
21 that habitability determination.

22 Q. So if FEMA standards for safe,

1       sanitary and functional are not met by a  
2       house, then it's not going to be habitable.  
3       Correct?

4               A.       If it was disaster-related or  
5       disaster-caused damages, it would not. In  
6       other words, the FEMA inspectors are to go out  
7       and capture all damages and make a call as to  
8       whether or not it was caused by the event.

9               Q.       So if a hurricane comes through  
10       and it blows a rock into an electric outlet  
11       cover and causes it to break on the outside of  
12       the house, that's obviously going to create a  
13       safety hazard. Correct?

14              A.       I wouldn't know that for sure.

15              Q.       If you have an exposed electric  
16       outlet?

17              A.       Was it covered or is it a simple  
18       outlet that was on the outside of the house?

19              Q.       One of those outlets is on the  
20       outside of the house and a hurricane blows a  
21       rock into it and it cracks it and it costs  
22       \$3.00 to replace but it creates a safety

1 hazard.

2 A. No. It would not be eligible.  
3 Because it's cracked, it may create a safety  
4 hazard. However, it's a \$3.00 item, and it is  
5 expected that the homeowner or the landlord  
6 would be able to make that repair without  
7 Federal assistance.

8 Q. And that's an instance of where  
9 this \$50 policy would come into place, would  
10 operate to deny benefits to somebody.  
11 Correct?

12 A. That is correct.

13 Q. Now, the statute, the Stafford  
14 Act, limits eligibility for assistance, for  
15 repair assistance, to disaster-related  
16 damages. Correct?

17 A. That is correct.

18 Q. And that's all the regulations say  
19 is, they just repeat this term, "disaster  
20 related." Correct?

21 A. Yes.

22 Q. FEMA regulations do not say what



1 FEMA considers to be disaster related.

2 A. No, not in regulation. I believe  
3 there is some mention where it describes that  
4 disaster related is damage that is a direct  
5 result of the disaster.

6 Q. But nowhere in the text or  
7 regulations does it say that the disaster has  
8 to be the main cause, the true cause, the  
9 proximate cause, the first cause of the  
10 damages. Correct?

11 A. I think by what it is stated that  
12 it is disaster related is that it would  
13 reflect what you had just indicated, that it  
14 is the primary cause of that damage, the  
15 disaster.

16 Q. So FEMA's reading of the statute  
17 or regulations is that the disaster must be  
18 the primary cause of the damages.

19 A. That the, yes, that the damages  
20 were caused by the disaster, by the event  
21 itself. There are causes of damage that are  
22 identified for each disaster declaration.

1 Whether it be wind-driven rain, hail, tornado,  
2 hurricane, there are categories of causes of  
3 damage of which the damage has to be reflected  
4 by one of those causes of damage identified  
5 for that disaster.

6 Q. But FEMA's reading of the term  
7 "disaster related" is that the disaster has to  
8 be the main or the primary cause of the  
9 damages.

10 A. The disaster would have been  
11 declared because of the damages associated  
12 with that disaster and that it is beyond the  
13 capability of recovery from the state and  
14 locals. So FEMA would only be going out there  
15 looking at that disaster-related damage for  
16 determining eligibility. I don't know if I  
17 answered that correctly, but it's sequential  
18 the way that a disaster is declared and what  
19 would be looked at for an inspector to be even  
20 engaged to go out and look at damages.

21 Q. I understand that in a disaster  
22 declaration there are listed causes of damage.

1           A.       Yes.

2           Q.       But my question is when FEMA looks  
3 at the term, quote, "disaster related" in  
4 Section 408 of the Stafford Act, does it read  
5 that term, "disaster related," to mean that  
6 the disaster must be the main or the primary  
7 cause of the damages?

8                   MS. WELLS: Objection; asked and  
9 answered.

10                   But you can answer it again.

11                   THE WITNESS: I would say yes,  
12 because that disaster, that declaration has  
13 identified the causes of damage and the  
14 disaster of which the inspector goes out to  
15 view has to have been caused by that disaster  
16 based upon one of those causes of damage.

17                   BY MR. WESEVICH:

18           Q.       And FEMA has policies for  
19 determining which damages are disaster  
20 related.

21           A.       They do not have -- they have line  
22 items that are in the inspection process that

1 list out all sorts of components to a home.  
2 The inspector then has to go out and determine  
3 the damages to those components and determine  
4 whether or not they were disaster-related  
5 damages or not.

6 Q. I am showing you Page 4584 where  
7 FEMA writes that "FEMA does not publish its  
8 standards for what is or is not disaster  
9 related." Do you see where it says that?

10 MS. WELLS: Which paragraph is  
11 that?

12 MR. WESEVICH: In Paragraph 23 at  
13 the very last clause, "FEMA does not publish  
14 its standards for what is or is not disaster  
15 related."

16 THE WITNESS: Yes, I see that.

17 BY MR. WESEVICH:

18 Q. What are FEMA's standards for  
19 determining what is or is not disaster  
20 related?

21 A. It is done through the Inspection  
22 Services, that based upon the causes of damage

1       they would go out and they would view the  
2       damage and make a determination as to whether  
3       or not it was caused by the event. And that  
4       is based upon the regulations that identifies  
5       the elements of, components of a house that  
6       could be determined eligible based upon the  
7       damages received due to that event.

8               Q.       But the standards that are  
9       referenced in Paragraph 23, are those the  
10      inspection guidelines and the line items and  
11      the habitability document that we discussed  
12      earlier that are on Pages 1081 and 1082?

13              MS. WELLS: I'm going to object to  
14      this question because this is a document which  
15      I believe is the answer --

16              MR. WESEVICH: Yes, ma'am.

17              MS. WELLS: -- of the Defendant to  
18      Plaintiffs' Complaint and, therefore, it was  
19      prepared by attorneys. Without actually  
20      seeing even the allegations that were in the  
21      Complaint that this is responsive to, this  
22      question and this line of questioning is out

1 of context, Number 1. And, Number 2, you are  
2 basically asking him his lay opinion of what  
3 is in a legal document that was prepared by  
4 attorneys.

5 And I don't really know -- he can  
6 talk generally about the policy. I'm not so  
7 sure that he can talk about this particular  
8 statement and vouch for it, because it's not  
9 necessarily something that he can vouch for.

10 MR. WESEVICH: Well, it's one of  
11 the items that is listed in the Rule  
12 30(b)(6) --

13 MS. WELLS: It's not listed.

14 MR. WESEVICH: It's all the  
15 documents that were filed in the case.

16 MS. WELLS: Well, all the  
17 documents filed in the case, but as I'm  
18 saying, I mean this is a particular question  
19 that you are asking him about something that's  
20 here.

21 MR. WESEVICH: This was a document  
22 that was filed in the case --

1 MS. WELLS: And you can ask him  
2 questions about it which would not be  
3 objectionable. I just think that the  
4 particular question you asked and the way that  
5 you are asking it here is objectionable. You  
6 can ask him generally about what the standards  
7 are and whether they publish them. But you  
8 can't necessarily drop back to that.

9 MR. WESEVICH: Well, that is my  
10 whole question.

11 MS. WELLS: Therefore, I think  
12 that's a fair reflection of what he's been  
13 asked to talk about. He can talk about FEMA's  
14 policies. He can't vouch for this particular  
15 document which is what you are asking him to  
16 do.

17 MR. WESEVICH: We have no  
18 disagreement on this. All my question is is  
19 what are the standards that are referenced  
20 there.

21 BY MR. WESEVICH:

22 Q. What are the standards for what's

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1 disaster related?

2 A. It all gets started with the 44  
3 CFR which identifies what could be eligible,  
4 and it starts broadly. The actual line items  
5 of which we saw earlier on the screen that was  
6 a description of the line items really breaks  
7 down all the different components of the home.  
8 It is up to the inspector to make a call as to  
9 whether or not damages to that home or those  
10 components of the home are disaster related.

11 Q. When you mention the CFR, do you  
12 mean 44 CFR Section 118(c) where it lists the  
13 different parts of the home? I can show you  
14 the regulation if you'd like to see it.

15 A. I would have to verify, but I do  
16 know it is in the Code of Federal Regulations.

17 Q. I am showing you --

18 MS. WELLS: Do you mind if we go  
19 off the record for a minute?

20 MR. WESEVICH: Sure.

21 (Recessed from 10:38 to 10:42  
22 a.m.)



1 BY MR. WESEVICH:

2 Q. We're back on. Mr. Carleton, if  
3 you could look at the regulation that's  
4 206.117(c), does that list the parts of the  
5 home that you were referring to that would be  
6 checked?

7 A. Part C? I don't know if I'm --  
8 which one are we --

9 Q. Yeah, (c)(2), 206.117(c)(2) under  
10 "Repairs."

11 MS. WELLS: Is it C?

12 MR. WESEVICH: We can move on.

13 THE WITNESS: This actually refers  
14 to direct assistance.

15 MR. WESEVICH: I've written down  
16 the wrong number in my outline. I'm sorry for  
17 the confusion. I'll come back to it.

18 BY MR. WESEVICH:

19 Q. Is deferred maintenance one of the  
20 ideas that FEMA uses to decide which damages  
21 are disaster related?

22 A. Deferred maintenance is a term

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1       that's used to describe preexisting condition  
2       of components or the overall home itself. So  
3       it's not necessarily a term that's used to  
4       describe damages that are associated with the  
5       disaster.

6               Q.       You gave a declaration in this  
7       case. Correct?

8               A.       Correct.

9               Q.       And I'll show you Page 4893 and  
10       94. And if you could look at the very last  
11       sentence on Page 4893, it says, "One of the  
12       factors that must naturally be considered when  
13       determining what is disaster related is the  
14       state of the home prior to the disaster and  
15       the state of the home after the disaster."

16              A.       That is correct.

17              Q.       So this idea of deferred  
18       maintenance is something that FEMA uses to  
19       determine which damages are disaster related.

20              A.       It describes the condition of the  
21       home. It's something that deferred  
22       maintenance is -- what FEMA inspectors are

1       supposed to do is go out and they verify what  
2       is disaster-related damage. But they also  
3       have to look at the condition of the home, and  
4       if there is preexisting damages or maintenance  
5       that was not up-kept on the home or structure  
6       or components of the home that the inspector  
7       would identify that as either preexisting or  
8       deferred maintenance.

9               Q.       Now, in Paragraphs 28 and 29 of  
10       your declaration --

11              A.       Yes.

12              Q.       -- Paragraph 28 describes a bunch  
13       of examples of deferred maintenance that were  
14       just items that existed prior to the disaster,  
15       pure preexisting condition. Right?

16              A.       Yes.

17              Q.       So if somebody has a broken window  
18       and then a disaster happens to come through  
19       after the window was broken, they can't ask  
20       FEMA to pay for that broken window. Right?

21                      MS. WELLS: Object to the form of  
22       the question.

1                   You can answer it.

2                   THE WITNESS: Not unless damages  
3                   resulted because that window was broken.  
4                   However, in other words, FEMA wouldn't repair  
5                   the window because that was a preexisting  
6                   condition. But due to the damages that  
7                   resulted inside of that window, they may be  
8                   able to be eligible for some of those  
9                   elements. But the actual repair of the window  
10                  would not be eligible because it was a  
11                  preexisting condition.

12                  BY MR. WESEVICH:

13                  Q.       Because the window was broken  
14                  prior to the hurricane coming through.

15                  A.       Correct.

16                  Q.       And if somebody asked FEMA to pay  
17                  for a window that was broken prior to the  
18                  disaster, that's fraud. Right?

19                  A.       Well, it wouldn't be eligible for  
20                  assistance. FEMA wouldn't pay it, so.

21                  Q.       Well, you make every single  
22                  applicant sign a paper, the Form 9069.

1           A.       Yes.

2           Q.       Correct?

3           A.       Correct.

4           Q.       And that swears under criminal

5 penalties that the information that the

6 applicant has provided to FEMA is correct.

7 Correct? Right?

8           A.       That is correct.

9           Q.       So if somebody is sitting there

10 claiming, "Hey, this window was broken by the

11 disaster" when they know it was broken prior

12 to the disaster, that's fraud. Right?

13           A.       If we paid it out and they

14 falsified when that window was broken, it

15 could be considered fraud.

16           Q.       So when you have a deferred

17 maintenance situation that's a pure

18 preexisting condition, you are talking about

19 somebody who is trying to defraud the Agency.

20           MS. WELLS: I am going to object

21 to the form of the question. It's unclear

22 that -- you are equating deferred maintenance

1 with pure preexisting condition. But I'm not  
2 sure that that's an accurate reflection of  
3 what Mr. Carleton, how he would define those  
4 terms.

5 BY MR. WESEVICH:

6 Q. Well, we are going to get -- I  
7 want to be very clear about how you use  
8 "deferred maintenance." And that's what we're  
9 about here.

10 One use that FEMA has for  
11 "deferred maintenance" is when there was  
12 something that preexisted the disaster and  
13 they're asking for it to be paid for.

14 A. Or not. And I say that because if  
15 an applicant recognizes that the window was  
16 broken prior to the event and not seeking FEMA  
17 to pay for it, then the inspector would also  
18 be asking those type of clarifying questions  
19 with the applicant. If there is evidence that  
20 that window was broken prior to the event such  
21 as water damage on the inside that was  
22 preexisting, the inspector would question the

1 applicant.

2 Q. We're going to get to all that in  
3 a lot of detail today.

4 A. Okay.

5 Q. But that's what I want. I want to  
6 be very clear about what this distinction is.  
7 But one form of deferred maintenance that you  
8 referred to in your declaration in Paragraph  
9 28 are items that existed prior to the  
10 disaster like the broken window prior to the  
11 hurricane. And if somebody asks you to pay  
12 for something like that, they're trying to  
13 defraud the Agency. Right?

14 MS. WELLS: I'm going to object to  
15 the form of the question.

16 But you can go ahead.

17 THE WITNESS: Are they not being  
18 truthful in when that window was broken?  
19 Absolutely. Would we pay them based upon  
20 their word of simply saying it broke during  
21 the event? No, we wouldn't. That is  
22 something that the inspector would be asking

1 more questions about. And if there's evidence  
2 that that window was broken prior to the event  
3 based upon water stains, the deterioration of  
4 that window and everything else, FEMA would  
5 not pay it. Therefore, the individual did not  
6 commit fraud.

7 BY MR. WESEVICH:

8 Q. The document that's shown on Page  
9 587, that's the document that all the  
10 applicants sign where they say that they are  
11 going to be truthful under pain of criminal  
12 penalties.

13 A. That is correct.

14 Q. Now we're looking at Page 4466.  
15 You actually put in giant print in every  
16 manual that you send to people that if anybody  
17 suspects anybody is lying about anything to  
18 FEMA to try to get disaster assistance, then  
19 they ought to report it.

20 A. That is correct.

21 Q. Okay. In Paragraph 29 of your  
22 declaration, you discuss another form of

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1 deferred maintenance which is when there are  
2 damages that are caused by a disaster but that  
3 could also be affected by deferred  
4 maintenance, by some preexisting condition of  
5 the home.

6 A. Correct.

7 Q. So --

8 A. Correct.

9 Q. So I want to spend a little time  
10 talking about these kind of dual causation  
11 situations.

12 Do you agree that damages to a  
13 home can in some cases be a combination of  
14 preexisting condition that is worsened by a  
15 disaster?

16 A. Yes.

17 Q. And FEMA has to decide which  
18 repairs to pay for in that situation pretty  
19 regularly. Right?

20 A. That is correct.

21 Q. And it is a lot more common to  
22 have this dual causation scenario than it is

1 to have the situation where somebody is trying  
2 to commit fraud on FEMA and ask them to pay  
3 for a preexisting condition. Right?

4 MS. WELLS: I am going to object  
5 to the form of the question. You are  
6 basically asking leading questions and  
7 testifying for the witness.

8 BY MR. WESEVICH:

9 Q. Please feel free to disagree with  
10 my questions. I'm trying to get through a lot  
11 of material as quickly as possible, but please  
12 feel free to ask me to clarify or disagree  
13 with anything that I say. I'm just trying to  
14 give you my best understanding of it so we can  
15 get through it.

16 A. If you could clarify.

17 Q. Okay. You see the dual causation  
18 problem all the time where FEMA has to make a  
19 call between is this a result of the disaster  
20 or is it the result of a preexisting condition  
21 where you can't be certain, both of them could  
22 have caused it, the damages. Right?

1           A.       Yes.   However, you can typically  
2       determine whether or not -- in other words, if  
3       a disaster occurs and it damages the siding of  
4       the house but the siding of the house -- it  
5       may have put a hole or ripped off some siding,  
6       you know, six square feet, ten square feet,  
7       but the rest of the siding is crumbling, that,  
8       yes, it could be determined that what was  
9       caused by the event was the removal of that  
10      six or ten square feet of siding, whereas, the  
11      rest of the house may have been deferred  
12      maintenance where there's a lot of dry rot or  
13      rot or other holes.

14                But yes, that determination is  
15      made by an inspector in the field who has to  
16      make that determination as to what was  
17      disaster related versus what was a preexisting  
18      condition or a deferred maintenance condition.

19           Q.       But my only question at this point  
20      is that scenario where an inspector has to go  
21      out and discern what was caused by the  
22      disaster and what was deferred maintenance,

1       that happens much more frequently than the  
2       situation where an applicant is trying to  
3       defraud the Agency and claim that something is  
4       caused by the disaster when it wasn't.

5               A.       Yeah, I don't know if it's -- when  
6       you say it happens more frequently, I don't  
7       know that for sure. Again, we rely a lot of  
8       what the applicant is saying based upon the  
9       experience of the inspector. The inspector is  
10      going to question the applicant and based upon  
11      what the inspector is viewing, you know, is it  
12      something that is taken to the point where the  
13      applicant is adamant that the storm broke this  
14      window and, yes, then it becomes a call on  
15      behalf of the inspector to say, "No, it was  
16      really broken before, because you can tell by  
17      all of this damage that occurred not as a  
18      result of this disaster."

19               So I don't know how frequently or  
20      infrequently they're making that determination  
21      between something that was preexisting or  
22      something caused by the event. The inspectors

1 are instructed to go out and capture all  
2 damages as they see it and determine which is  
3 disaster related and which is not if there is  
4 any preexisting condition.

5 Q. I'd like you to look at Page 104.  
6 Please read that page. Could you let me know  
7 when you've had a chance to look at that?

8 A. Yes. Yes, I have completed.

9 Q. This part right here where it says  
10 "Deferred Maintenance," those three paragraphs  
11 where it refers to deferred maintenance,  
12 that's the standard that FEMA uses to decide  
13 which damages are preexisting conditions and  
14 which were disaster related. Correct?

15 A. This is describing some of the  
16 instances of which deferred maintenance would  
17 be applied, yes.

18 Q. These three paragraphs under  
19 "Deferred Maintenance" on Page 104, that's how  
20 FEMA decides what damages are preexisting  
21 conditions and which ones are disaster  
22 related. Is that correct?

1           A.       No. No. There is preexisting  
2           condition, the preexisting condition which  
3           could refer to deferred maintenance. Deferred  
4           maintenance is more accurate when it describes  
5           the examples within these paragraphs where it  
6           refers to rotting boards, roofs with missing  
7           and/or crumbling shingles, and foundations  
8           with pre-disaster cracks which allow  
9           unwarranted. It also can apply to many  
10          different elements of the home which aren't  
11          necessarily captured here.

12          Q.       By this language, if an inspector  
13          has a question about whether something is  
14          preexisting damage or whether it was caused by  
15          the disaster, then this says that the default  
16          is that it's called preexisting condition.  
17          Correct?

18          A.       It says that it would be called  
19          deferred maintenance. Other elements that  
20          aren't mentioned in here, other examples of  
21          deferred maintenance could be bricks that have  
22          outlasted its lifetime which are crumbling,

1 windows with sills that are rotted or panes  
2 that are separated due to the caulking. I  
3 mean this is not an inclusive list of  
4 everything that is considered deferred  
5 maintenance. The inspectors that go out  
6 typically have a background in construction.

7 Deferred maintenance is a  
8 typically used description when elements have  
9 not been up-kept to a standard of which they  
10 will still function for their intended  
11 purpose. So this is not inclusive of  
12 everything that could be considered deferred  
13 maintenance.

14 Q. I understood you could have just  
15 testified that examples are useful in defining  
16 what FEMA means by "deferred maintenance." Is  
17 that accurate?

18 A. That is accurate.

19 Q. And I also understood you to  
20 testify that the inspector's background in  
21 construction is helpful in allowing the  
22 inspector to distinguish between what's a

1 preexisting condition and what's caused by the  
2 disaster.

3 A. Yes, that is helpful.

4 Q. And this language that is in these  
5 first three paragraphs under "Deferred  
6 Maintenance," under the heading "Deferred  
7 Maintenance." On Page 104, those three  
8 paragraphs were applied in decisions that were  
9 made for Disaster 1780. Correct?

10 A. The concept of deferred  
11 maintenance as it's described here were  
12 applied, to the best of my knowledge. What  
13 we're looking at is the inspection manual for  
14 the FEMA inspectors. And this gives the  
15 examples and gives some reference to what  
16 deferred maintenance is.

17 And basically what it is saying  
18 here is that it is real property that has been  
19 neglected to the extent that it will no longer  
20 adequately perform its intended function. So  
21 this is the overarching reference to where or  
22 intent of what deferred maintenance is, but it



1 is not fully descriptive on everything that  
2 could be identified as deferred maintenance.

3 Q. But this text right here, it  
4 appears in a document that was published by  
5 PaRR, P-a-r-r. And I'm looking at Page 98  
6 now. The deferred maintenance language we've  
7 been discussing on Page 104 appears in a  
8 document that was published by PaRR. Correct?

9 A. Correct.

10 Q. But that language, the three  
11 paragraphs under "Deferred Maintenance," every  
12 single word of that language was written by  
13 FEMA. Correct?

14 A. I don't know that for sure.

15 Q. Now we're looking at Page 5382.

16 MS. WELLS: Can you please  
17 identify where this document comes from?

18 MR. WESEVICH: This was provided  
19 to you as Exhibit A of the written discovery  
20 that we gave to you in November of 2011.

21 BY MR. WESEVICH:

22 Q. I'm looking now at Page 5391. And

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1       this is a document that is the inspection  
2       guidelines template that FEMA published, I  
3       guess, in May the 8th back in 2003. And would  
4       you agree with me that on Page 5391 it shows  
5       the identical language that appears in Page  
6       104?

7               A.       It would appear that it's the  
8       same.

9               Q.       Yes. And when you say it's the  
10       same, you mean that the language that FEMA  
11       wrote on Page 5391 under the heading "Areas of  
12       Deferred Maintenance" is identical to the  
13       language for "deferred maintenance" that  
14       appears on Page 104.

15              A.       Yes, I would assume that FEMA  
16       provided this document.

17              Q.       Under the third paragraph under  
18       the heading "Areas of Deferred Maintenance" on  
19       Page 5391, when FEMA writes that "Disaster  
20       damages to these items must be significant,  
21       obvious and without question," doesn't that  
22       mean that if the inspector has any doubt about

1       whether something is a preexisting condition  
2       or whether the damages were caused by the  
3       disaster, that they are to call the item  
4       deferred maintenance?

5                   MS. WELLS:  Objection to the form  
6       of the question.

7                   THE WITNESS:  Let me read it more  
8       carefully here.

9                   BY MR. WESEVICH:

10                Q.     Ms. Wells is making a record for  
11       the judge to consider.  And the judge will  
12       consider any of those objections later, but we  
13       will just proceed.

14                A.     Okay, okay.  What that paragraph  
15       is actually indicating is it's trying to  
16       describe in situations where there is deferred  
17       maintenance that the line item or the area  
18       that's being inspected was significantly  
19       worsened by the event.  And that means that it  
20       must be significant, obvious and without  
21       question.

22                Q.     So we're going -- were you

1 finished answering? I don't want to interrupt  
2 you.

3 A. Yes.

4 Q. We're going to talk about  
5 "significantly worsened," but right now I want  
6 to focus on this term "without question."  
7 Doesn't that term on Page 5391 mean that if  
8 there's any doubt, any question about whether  
9 something is a preexisting condition or  
10 whether it was, the damage was caused by the  
11 disaster, that the default is call it deferred  
12 maintenance and don't pay?

13 A. No. It's still left up to the  
14 judgment of the inspector. So yes, in the  
15 inspector's mind and in what he is reviewing,  
16 he or she is seeing, that it's obvious that to  
17 that inspector that it was caused by the  
18 disaster. So I can't say for sure that what  
19 it means in every instance is that it's a  
20 default to deferred maintenance. I've always  
21 known inspectors to err on the side of  
22 applicants. So I mean it's a judgment call by

1 the inspector as the inspector is reviewing  
2 that damage.

3 Q. But that's not what that language  
4 says. Right?

5 A. It's interpretive. It's basically  
6 leaving it up to the inspector in the field to  
7 make that call.

8 Q. Where does it say that? What text  
9 are you referring to when you so testify?

10 A. I am not referring to text. What  
11 I'm referring to is I may view something one  
12 way. You may view something differently while  
13 we're viewing the same thing. And so it's a  
14 call that, you know, without question. I mean  
15 the inspector may have a question whether or  
16 not it was caused by the event or not. So  
17 it's -- I mean I can't say it's 100 percent of  
18 the time going to be yes or no. It's a  
19 judgment call by the inspector based upon what  
20 he or she is viewing at the time.

21 Q. And how do you reconcile what you  
22 just described in your testimony about the

1 question of deferred maintenance being a  
2 judgment call with the text that appears on  
3 Page 5391?

4 A. The inspector has experience in  
5 construction and has experience in doing  
6 inspections. Each inspector is going to  
7 capture the damage. But with each damage that  
8 they capture they're making a judgment call on  
9 every instance.

10 So we rely upon the experience and  
11 expertise of the inspector to capture the  
12 damages as they see it at the time of the  
13 inspection. So I can't -- you know, it's  
14 second nature to the inspectors who have been  
15 trained to go out and look at damage. I mean  
16 it's not something you can actually put down  
17 in writing. It's subjective and it's a call  
18 that we rely upon the inspector to make in the  
19 field.

20 Q. You produced about 4300 pages of  
21 documents in this case.

22 A. Mmm-hmm.

1           Q.     Do any of them indicate that the  
2     inspectors are told that "Whether something is  
3     a preexisting condition or whether it is  
4     caused by the disaster, that is a judgment  
5     call that's up to you"?

6           A.     I wouldn't know. I have not seen  
7     all the documents. However, I would say that  
8     we rely upon the expertise of the inspectors  
9     to be the eyes and ears of FEMA to verify and  
10    validate that damage. If the inspector made a  
11    wrong call, the applicant has a right to  
12    appeal FEMA's decision based upon the  
13    information that was gathered.

14          Q.     We're going to get to all the  
15    appeals. But what I want to know is whether  
16    you are able to point to any document that  
17    shows in writing that the inspector was told  
18    that "Whether something is deferred  
19    maintenance is a judgment call that's up to  
20    you."

21          A.     The materials that I have seen, I  
22    couldn't point to it. But I haven't seen the

1       4300 pages as you're referring to as to what's  
2       been submitted.

3               Q.       That requires me to get into what  
4       you did to prepare for this deposition. I  
5       need to understand that.

6               A.       Could you clarify?

7               Q.       Please tell me everything you did  
8       to prepare for this deposition.

9               A.       I read through some of the  
10       documentation, my testimony along with all of  
11       my exhibits. And I've read through, cursory  
12       review of some of the other documents, but not  
13       the full range of all documents. I am  
14       prepared based upon what I have submitted and  
15       my experience with FEMA in answering any  
16       questions you have.

17              Q.       Well, but because you're not  
18       apparently able to answer this question about  
19       whether a document exists telling inspectors  
20       that it's a judgment call up to them about  
21       whether something's a preexisting condition or  
22       disaster related, as I understand your



1 testimony is you don't know whether FEMA has a  
2 document like that.

3 A. Correct.

4 Q. And so what I need to know is what  
5 you've done to find out.

6 A. I haven't done anything to find  
7 that out. I have worked as an inspector back  
8 in 1992, of which I was instructed at the time  
9 that "We rely upon you to make your best call  
10 and make those determinations for  
11 disaster-related damages."

12 I've also worked with the NPSCs  
13 for years and years in addressing some of the  
14 concerns that have come up. I do not oversee  
15 the Inspection Services contract and I do not  
16 produce the documents through Inspection  
17 Services on what they say or don't say to the  
18 inspectors.

19 Q. Having worked as an inspector, you  
20 can testify from personal experience then that  
21 it's not always easy to tell whether something  
22 was a preexisting condition or whether

1 something was caused by the disaster.

2 A. I must also preface my response by  
3 saying I was an inspector when nothing was  
4 automated -- it was all manual and it was in  
5 1992 -- of which I was expected to go out and  
6 view damage and make a call as to what was  
7 disaster related or not disaster related.

8 Q. And you would agree that it's a  
9 judgment call as to whether a damage is  
10 preexisting or disaster related.

11 A. Yes. But at that time the  
12 instruction was also to look at only  
13 disaster-related damage. So we did not  
14 necessarily capture issues related to  
15 preexisting damage or deferred maintenance.

16 Q. Okay. But would you agree that  
17 it's a judgment call often; you can't be sure  
18 often whether something is a preexisting  
19 condition or not?

20 A. That is correct.

21 Q. And sometimes it takes some real  
22 detective work by the inspector to really be

1       able to tell whether something is a  
2       preexisting condition or --

3               A.       A lot of times it's pretty  
4       obvious. And I say obvious to the extent that  
5       if you go into a basement and it's musty and  
6       you can see evidence of mold and everything  
7       else, you can pretty much determine whether or  
8       not it's new or if it's that's been around for  
9       a very long time.

10              You can also look at a roof, for  
11      instance, and if the shingles have buckled,  
12      cracked, shrunken, curled, chances are that  
13      roof has lived its lifespan, and it has not  
14      been replaced or repaired over time. So it's  
15      something that the inspector is to look at and  
16      determine whether or not it was preexisting,  
17      deferred maintenance or actually caused by the  
18      disaster.

19              So when you say it takes a lot of  
20      investigatory work, it may and it may not. It  
21      depends on the situation. And I say depends  
22      on the situation as to how obvious it is.

1           Q.       Disaster 1780, the one that we are  
2 talking about, most of the questions of  
3 deferred maintenance and most of the judgment  
4 that had to occur involved roofs. Correct?

5           A.       To my knowledge, yes.

6           Q.       Let's talk about roofs. Inspector  
7 goes to see a house and sees two shingles  
8 missing. How do you tell whether that's  
9 deferred maintenance or whether it's -- I mean  
10 preexisting condition or disaster caused?

11          A.       If it's only two shingles missing,  
12 chances are it would be not considered  
13 sufficient damage unless there was damage  
14 beyond, damage caused by those shingles  
15 missing. If there is damage that is on the  
16 inside of the house and the ceiling or on the  
17 wall that would indicate that those shingles  
18 had been missing for a while and had not been  
19 properly flashed, then it could be determined  
20 that those shingles were missing prior to the  
21 event and that there was no additional damage  
22 caused by the event. And so that is a call

1       that the inspector would need to make.

2               So by having two shingles blown  
3       off the roof or missing from the roof, there  
4       would be other evidence to look at to  
5       determine whether or not it was something that  
6       was preexisting or as a result of the  
7       disaster.

8               Q.       What I want to understand is all  
9       the evidence that you would look at. You're  
10      an inspector, you go to the house, two  
11      shingles missing. Tell me all the evidence  
12      you'd look for.

13              A.       I couldn't tell you what every  
14      inspector would do. I know that an inspector  
15      would go out and if the applicant indicates  
16      that they had roof shingles blown off, the  
17      inspector would look inside for any water  
18      damage that may have occurred or anything.  
19      They would also ask, "Well, has the roof been  
20      replaced?" They would ask a series of  
21      questions. They would go into the house.

22              Q.       So one of the things that they

1 would do would be ask the applicant.

2 A. Yeah, that is something that is  
3 typically -- every inspector does things  
4 possibly differently. But chances are if  
5 there's questions, they'll have to ask.  
6 That's part of their investigatory process.  
7 They would be asking questions. They would  
8 also look for the evidence to support whatever  
9 damages that may have occurred. And that  
10 could be looking inside the house, looking at  
11 the exterior walls, looking at the ceilings,  
12 looking at the condition of, you know, fascia  
13 boards, you know, rake boards and all that.

14 So they would have to have a  
15 better understanding as to, you know, whether  
16 or not those shingles were missing before the  
17 event. They would look for new evidence of  
18 damage as a result of the event.

19 Q. Well, first I want a catalog of  
20 what an inspector could look for to find out  
21 whether the disaster caused those shingles to  
22 come off or whether it was a preexisting

1 condition. And I understand you to say they  
2 look at the inside of the house underneath  
3 where those shingles appeared and they would  
4 ask the applicant.

5 A. They would look at any vicinity  
6 that those shingles are missing, and they  
7 would look to see if there is any evidence of  
8 new damage as a result of the applicant  
9 indicating that "Those shingles are now  
10 missing from my roof."

11 Q. What new damage? Now, I  
12 understand you to be talking about right next  
13 to those two shingles that were off.

14 A. No, no. I mean if the shingles  
15 are on the roof and the shingles are now  
16 missing, they would look to see if other  
17 damages resulted from those shingles being  
18 missing. They would go in the house. If they  
19 see that there is a water stain or water  
20 damage to the ceiling that is not browned,  
21 buckled or anything else that would indicate  
22 that it may have been there prior to the

1 event, then he could look at that and indicate  
2 that the damages to the roof may have been  
3 caused by the event.

4 Again, if there's evidence that  
5 the shingles were missing, goes in the house,  
6 there's no new evidence of damage but sees  
7 brown stains or water stains or buckled  
8 ceiling, then the inspector could make a  
9 determination that it was a preexisting  
10 condition.

11 Q. We just have a lot of ground to  
12 cover and I want to go quickly, but I need to  
13 get a complete catalog.

14 I hear you saying that if you want  
15 to know whether the two shingles were blown  
16 off by the disaster, you go inside the house  
17 to look at the condition underneath the roof  
18 and you talk to the applicant. Is there  
19 anything else besides those two that the  
20 inspector would do?

21 A. Possibly.

22 Q. What?



1           A.       If they can view the damage from  
2       outside. I mean it depends on the situation.  
3       Are we talking about a one-story home that you  
4       can step back and look at the roof and make a  
5       determination --

6           Q.       Sure.

7           A.       -- or is it a two-story house that  
8       you can't get up on the roof?

9           Q.       Let's talk about one story.

10          A.       Well, again, it's up to the  
11       inspector. The inspector is out there to  
12       catalog the damage and to look at the damage  
13       and make a validation as to whether or not it  
14       was caused by the event.

15          Q.       I'm asking you how a very common  
16       sighting by inspectors during Disaster 1780  
17       could have been addressed. And as a former  
18       inspector, I want to know all the things that  
19       you do to make that decision.

20          A.       I can tell you what I would do. I  
21       cannot tell you what other inspectors would  
22       do.

1 Q. Fine.

2 A. I would try to physically view  
3 that damage to the roof.

4 Q. Okay.

5 A. I would be talking to the  
6 applicant to find out more about the damages  
7 associated to that roof.

8 Q. Okay.

9 A. I would look to see if it's,  
10 depending upon the location of where those  
11 shingles are missing, if there's evidence of  
12 new damage either on the exterior of the  
13 house, the interior of the house, if it's a  
14 single story home, is it on the corner where  
15 it could run down, possibly see some damage in  
16 the basement. Water is a funny thing where it  
17 can travel.

18 And so myself, with my knowledge  
19 of construction, I would look to try to  
20 determine whether or not that damage was a  
21 result of that event.

22 Q. Well, let's take these one by one,

1       inside the roof, outside on the roof and  
2       talking to the applicants.

3                   First, let's talk about the  
4       applicants. In all the documents that you  
5       produced, you have lots of training materials  
6       for the inspectors. Right?

7           A.       Yes.

8           Q.       And none of those documents  
9       anywhere ever even once suggest that the  
10      inspectors ask the applicant whether damage  
11      was preexisting or whether it was caused by  
12      the disaster.

13                   MS. WELLS: I'm going to object to  
14      the form of the question.

15                   THE WITNESS: And I would say that  
16      it's up to the inspector. I mean the  
17      inspector is out there trying to capture the  
18      cause of damage, how it was damaged and the  
19      amount of damage.

20                   BY MR. WESEVICH:

21           Q.       Right.

22           A.       It would be in the best interests

1 of the inspector to question the applicant.

2 Q. And FEMA has very detailed  
3 questions that the inspectors are directed to  
4 ask the applicants about ownership of the  
5 home. Correct?

6 A. There are questions that they have  
7 to verify from the applicant.

8 Q. And there are specific documents  
9 that they're supposed to verify from the  
10 applicant about exactly who owns that  
11 property.

12 A. Correct.

13 Q. But there's nothing in any of the  
14 documents that says to the inspectors "When  
15 you're making this judgment about whether  
16 something was a preexisting condition or  
17 whether it was caused by the disaster, ask the  
18 applicant's view."

19 A. No. It has to be obvious and  
20 based upon the deferred maintenance what it  
21 is. It's a judgment call. If you had to lay  
22 out every conceivable question that the

1 inspector has to ask as a mandatory question,  
2 it would be impossible to do. So we rely upon  
3 the inspectors and their experience and their  
4 training to be able to go out, meet with the  
5 applicant. They are required to gather  
6 certain data and verify certain data, but they  
7 also have to conduct an inspection.

8 We don't necessarily come up with  
9 every conceivable question that that inspector  
10 needs to ask and validate to that applicant.  
11 It would be an oversome burden to the  
12 applicant if we listed out thousands of  
13 questions.

14 Q. But not only does FEMA not come up  
15 with every conceivable question, as you just  
16 stated, they actually don't even suggest  
17 anywhere in the documents that you produced,  
18 in the training documents or any other  
19 document, that inspectors should get the  
20 applicant's claim recorded as to preexisting  
21 condition.

22 MS. WELLS: Object to the form of

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1 the question.

2 THE WITNESS: In writing, no. In  
3 writing, no. But --

4 BY MR. WESEVICH:

5 Q. And FEMA records exactly what  
6 documents were checked to verify ownership of  
7 the residence for each applicant. Correct?

8 A. Yes, that is correct.

9 Q. But FEMA doesn't record anything  
10 in ACE 3 -- that's A-C-E 3 -- or NEMIS about  
11 the applicant's claim as to preexisting  
12 damage.

13 A. In comments. If the inspector or  
14 the applicant insists on something, that the  
15 inspector has an ability to enter those into  
16 comments. Within the ACE pen tablet in the  
17 software, there's an ability for the inspector  
18 to capture what the applicant is stating, but  
19 it's not something that FEMA requires the  
20 inspector to do.

21 Q. And at one time FEMA did require  
22 comments on deferred maintenance.

1           A.       That is correct.

2           Q.       And it stopped requiring those  
3       comments.

4           A.       It stopped requiring the comments  
5       with the exception of anything that they want  
6       to say about deferred maintenance, because  
7       they now have a box in the ACE palm pad or in  
8       the ACE software that refers to deferred  
9       maintenance. The reason being is because each  
10      inspector would put comments on deferred  
11      maintenance within their comments, and if an  
12      applicant called up to ask questions about  
13      their inspection, the caseworker would have to  
14      sift through all of the comments to look at  
15      whether or not there was that particular item  
16      that the applicant was requesting information  
17      on was addressed. So they have now identified  
18      it as an easier to indicate up front whether  
19      or not there was deferred maintenance by  
20      category of damage.

21          Q.       But there's no comments that are  
22      any longer required about the basis for the

1 inspector's judgment as to deferred  
2 maintenance?

3 MS. WELLS: I'm going to object to  
4 the form of the question. You're assuming he  
5 said that before there was, and that's not his  
6 testimony. You're saying there's no longer a  
7 requirement that they include comments about  
8 why they determine something was deferred  
9 maintenance or not, and I'm not sure he  
10 testified that there ever was such a  
11 requirement. He's more talking about where on  
12 the form they indicated their assessment of  
13 deferred maintenance.

14 BY MR. WESEVICH:

15 Q. Maybe we can do this the short  
16 way. There used to be a requirement that  
17 there was comments describing the basis for  
18 deferred maintenance. Right?

19 A. Yes. If the inspector viewed  
20 deferred maintenance or preexisting  
21 conditions, they were to place it in comments.

22 Q. And their explanation as to why.



1 Right?

2 A. When you say why, why they placed  
3 them in comments?

4 Q. How they made this judgment. You  
5 know, did they go out to the roof and see some  
6 damage on the outside of the roof? They used  
7 to be required to give their basis for saying  
8 that something was a preexisting condition as  
9 opposed to being caused by the disaster.

10 A. Yes. And the reason being is that  
11 an inspector is to go out and view all damages  
12 to the house. They are to make a  
13 determination as to whether or not damages  
14 were disaster related or not. What that did  
15 was that gave a complete picture of all  
16 damages, whether it was deferred maintenance,  
17 preexisting or caused by the disaster.

18 So that if an applicant called up  
19 and questioned that "They didn't address my  
20 basement," then the caseworker could go into  
21 the case file and say, "Yes, the inspector did  
22 and said that it was a preexisting condition."

1       What that did was it allowed FEMA to process  
2       all damages under the initial inspection as  
3       opposed to having to send out another  
4       inspector to verify what the applicant might  
5       not be stating that wasn't captured on the  
6       first inspection.

7               Q.       But the prior manner of recording  
8       deferred maintenance placed in FEMA -- in  
9       NEMIS, excuse me -- comments that described  
10      the basis for a deferred maintenance decision.  
11      Correct?

12               MS. WELLS: I'm going to object to  
13      the form of the question. It's unclear what  
14      you mean by basis for a deferred maintenance  
15      decision. And there's a lot of problems.  
16      What's the decision? I mean are you saying  
17      that the inspectors are making a decision?  
18      Are you saying that they're -- I mean it's  
19      just unclear from your question what you are  
20      asking.

21               BY MR. WESEVICH:

22               Q.       Inspectors do make a decision

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1 about what is deferred maintenance and what is  
2 not. Right?

3 A. They make a judgment call.

4 Q. And it is a judgment call.

5 A. It is a judgment call.

6 Q. It's pretty hard to be certain  
7 about whether it is or not. Right?

8 A. It's hard to make a 100 percent  
9 call. It is based upon the experience of the  
10 inspector and what he or she is viewing at the  
11 time.

12 Q. But they don't write down in NEMIS  
13 or in the ACE pen tablets the reason they made  
14 that decision. Right?

15 A. No.

16 Q. And they used to do that but they  
17 don't anymore.

18 A. I don't know if they would record  
19 the reason for it. I think what they would do  
20 is say, you know, "Roof, deferred  
21 maintenance." I don't know if they would give  
22 any more descriptor of what is currently in

1 the ACE software.

2 Q. So as I understand your testimony,  
3 all that was recorded in the comments in the  
4 past was the areas of deferred maintenance,  
5 what is now a separate screen, that was  
6 changed from the comment to now being a  
7 separate screen in ACE.

8 A. I wouldn't say all. I mean some  
9 -- and the reason why I say that is because  
10 right now on ACE there are categories of  
11 components that could be marked as deferred  
12 maintenance. I've read comments of inspectors  
13 where they might write a paragraph explaining,  
14 you know, where water may have come in, where  
15 water was preexisting. It was elaborate, but  
16 it would be, you know, a call of, you know,  
17 "foundation, deferred maintenance."

18 So it does not capture all  
19 comments. However, the inspector can still  
20 put deferred maintenance comments for  
21 clarification in the comments field of the ACE  
22 software.

1           Q.       But FEMA does not require them to  
2 do so.

3           A.       FEMA does not require them to do  
4 so, correct.

5           Q.       Now we're looking at Page 4993.  
6 And if you'd look at Page 8.

7           A.       Yes.

8           Q.       Under Q & A, Number 20.

9           A.       Yes.

10          Q.       It says that they were required in  
11 the past to explain their basis for their  
12 deferred maintenance judgment.

13          A.       I don't know what you mean by  
14 basis. I mean there is an area in the palm  
15 pad where you could put comments. Comments  
16 could come back that the roof equals deferred  
17 maintenance. There could be a lot more  
18 further explanation that if they could not, if  
19 they had to do more investigation to determine  
20 whether or not it was a preexisting condition,  
21 they may put more explanation in there. But  
22 it's not a basis. It's a clarification. It's

1 a summary of what they are describing for  
2 deferred maintenance.

3 Q. Okay. As I understand what you  
4 are trying to say -- and please correct me if  
5 I'm wrong -- is that the word "details" in the  
6 very first line in the answer to Question 20  
7 on Page 4993, by that word "details," it could  
8 mean simply the area of deferred maintenance  
9 or it could mean the basis but it doesn't say  
10 which.

11 MS. WELLS: I'm going to object to  
12 the form of the question.

13 THE WITNESS: Again, with -- yes.  
14 It could mean either one in the sense that if  
15 the entire roof -- you know, it might be  
16 "entire roof equals deferred maintenance." I  
17 don't know if that requires any more detail.  
18 But if there's sections of the roof that are  
19 deferred maintenance, I would have to explain  
20 that, you know, 50 square feet of roofing  
21 deferred maintenance, that would be more of a  
22 detail to clarify what I am stating as

1 deferred maintenance.

2 And the inspector still has that  
3 ability to clarify in comments, even though  
4 now we have a separate box that will generally  
5 characterize areas of deferred maintenance.  
6 So it's different now, but the information  
7 isn't necessarily different. It's up to the  
8 inspector to make it perfectly clear what they  
9 are trying to state as deferred maintenance.  
10 So it may take explanation. It may not take  
11 explanation.

12 BY MR. WESEVICH:

13 Q. Now, you say one of the other ways  
14 -- let's go back to this two shingles off the  
15 roof example that we've been discussing. You  
16 say one of the ways you can tell whether it  
17 was preexisting is whether there is damage to  
18 the inside underneath those two shingles.  
19 Correct?

20 A. Yes, if there was water  
21 infiltration coming in through that area.

22 Q. Well, if a hurricane blew through,

1 usually they have rain associated. Right?

2 A. Yes.

3 Q. And so that rain would have  
4 ordinarily wet the area under the two shingles  
5 somehow. Right?

6 A. If it was wind-driven rain, it  
7 could very easily, yes, as it could under  
8 other shingles if the wind is blowing and the  
9 rain is driving and it could penetrate other  
10 areas of the shingles that aren't blown off.

11 Q. So help me understand how it is  
12 that the inside condition tells you anything  
13 about the preexisting state of the shingles on  
14 the roof. What is it going to tell you that  
15 allows you to tell whether it was preexisting?

16 A. The condition, if there is water  
17 stains on the ceiling.

18 Q. But couldn't those have been  
19 caused by the disaster if there's water  
20 stains?

21 A. It could have.

22 Q. How do you know which one?



1           A.       But we get our inspectors out  
2       there very quickly. Chances are you'll be  
3       able to make that difference. I mean --

4           Q.       How is what I need to understand.

5           A.       Sheetrock does not dry out all  
6       that quickly. And is it pungy? Is it  
7       something that's new? Does it have brown  
8       stains that indicate that it's been there for  
9       a while? It's a judgment call by the  
10      inspector. Now, if there's evidence that  
11      there are concentric rings which means that,  
12      yeah, depending upon the different rains, you  
13      may have different areas of leakage, that's  
14      something that the inspector will have to make  
15      that call on.

16                   If there's new damage where it's  
17      still wet, it's still pungy, it's still  
18      dripping, that would indicate that there is  
19      new damage but the damage inside -- in other  
20      words, the deferred maintenance or the  
21      shingles off the roof that were preexisting  
22      may have worsened the damage inside. And so

1 we're going to take care of the damage inside  
2 that home.

3 Q. So what you are saying is that  
4 even if the roof was a deferred maintenance  
5 roof, as you say, that if the hurricane blew  
6 through and it caused additional damage to the  
7 inside, then FEMA will pay for the damage  
8 inside.

9 A. It has to be made worsened by the  
10 event, yes. And it's a call by the inspector  
11 as to whether or not it was worsened by the  
12 event.

13 Q. Well, it has to be significantly  
14 worsened by the event --

15 A. Yes.

16 Q. -- for FEMA to pay for it. Right?

17 A. Yes.

18 Q. Worsened is not enough. The  
19 standard says significantly worsened.

20 A. Significantly worsened.

21 Q. Is that correct?

22 A. Yes. That is what is written,

1       yes.

2               Q.       This is that same PowerPoint that  
3       we began discussing earlier today. I guess it  
4       begins at Page 5004. And right now we're  
5       looking at Page 5108.

6               A.       Yes.

7               Q.       Now we're looking at Page 5109.

8               A.       Yes. Yes.

9               Q.       This says the opposite of what you  
10      just stated, what you just testified. Right?

11              A.       No. It's stating exactly what I  
12      testified. If we go back one page --

13              Q.       Okay. We're looking at 5108?

14              A.       Yes. What we are saying here is  
15      that it's an old roof. Wind-driven rain  
16      caused leaks or leaked into the house and  
17      damage, but the ceiling shows signs of older  
18      water damage as well. The house sustained no  
19      other damage. So the call here would be that  
20      it's not a habitability issue and that there  
21      were signs of no other damage. So it's a  
22      call.

1                   If we go to now the next page,  
2       "The inspector judged that the preexisting  
3       damage to the roof was not worsened by the  
4       storm and, therefore, the ceiling damage was a  
5       direct result of deferred maintenance." So it  
6       was deferred maintenance, and that's what I  
7       was describing earlier. If there's evidence  
8       that there was existing condition, water spots  
9       and everything else, and it was not made worse  
10      by the event, then there would not be -- and  
11      it does not create a habitability issue, then  
12      they would not be assisted for the repair of  
13      that.

14               Q.       But this is talking about, this  
15      whole hypothetical that we're talking about --  
16      let's first take habitability off the table.  
17      That's not what this PowerPoint is describing.  
18      It's describing how a deferred maintenance  
19      call is made. Right?

20               MS. WELLS: I'm going to object to  
21      the form of the question.

22               BY MR. WESEVICH:

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1           Q.     This doesn't say anything about  
2     habitability anywhere.   Right?

3           A.     FEMA provides assistance due to  
4     the habitability condition of the home.   So  
5     the whole premise of doing an inspection is to  
6     determine the habitability of the home by  
7     capturing the damage sustained by the event.

8           Q.     Doesn't this say that the ceiling,  
9     doesn't it say on 5108 that the ceiling was  
10    damaged by the disaster?

11          A.     But it was not made worsened.

12          Q.     Where does it say that?

13          A.     On the next page.   "Preexisting  
14    roof damage was not worsened by the storm."

15          Q.     The roof was not.

16          A.     Right.

17          Q.     But the ceiling was.   It says here  
18    on 5108, it says the ceiling was damaged by  
19    the storm.

20          A.     But to what degree?   Was it simply  
21    just, you know, filling in where the old  
22    stains were?   I mean if it's a result that was

1 not worsened, significantly worsened, then it  
2 wouldn't create a habitability issue. So the  
3 call here would be that there was -- and,  
4 again, I have to stick with habitability  
5 because FEMA only provides assistance when  
6 habitability has been affected. What this is  
7 saying is that the habitability of the home  
8 was not affected. And, therefore, what was  
9 happening is there may have been damage, but  
10 it was caused by the preexisting condition of  
11 deferred maintenance.

12 Q. So you're testifying that the  
13 deferred maintenance condition of the roof  
14 allowed the disaster to damage the ceiling and  
15 FEMA, therefore, will not pay for the ceiling.

16 MS. WELLS: Object to the form of  
17 the question.

18 THE WITNESS: It allowed  
19 additional water to come into the ceiling.  
20 And due to the deferred maintenance of which  
21 there was no other damage, then they would not  
22 receive assistance, and it did not affect the

1       habitability of that home.

2                       BY MR. WESEVICH:

3               Q.       Due to the deferred maintenance of  
4       the roof --

5               A.       Yes.

6               Q.       -- they would not receive  
7       assistance for the ceiling.

8               A.       Right, because the ceiling, again,  
9       it did not create a significant damage. So  
10       there is no additional damage that would  
11       substantiate a habitability repair item,  
12       because the roof had deferred maintenance,  
13       preexisting condition.

14              Q.       How can you tell, how can the  
15       inspector tell if a roof is a poorly  
16       maintained 30-year-old roof?

17              A.       They can usually tell by the look  
18       of the shingles, if it's cracked, if they've  
19       shrunk, if they've buckled, if they've  
20       cracked. It's something that would be  
21       observed by the inspector.

22              Q.       I want a complete list that you

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1 understand of what the inspector would  
2 observe. I hear cracked, buckled.

3 A. You heard cracked, buckled,  
4 shrunken, curled, missing shingles. There's a  
5 whole lot of things that would indicate that  
6 a roof is older.

7 Q. But missing shingles could just as  
8 easily be caused by the disaster as by the --

9 A. Yes. And as described, they would  
10 look at whether or not additional damages  
11 occurred as those new shingles blew off,  
12 caused by the event that created other damage.

13 Q. Now, this cracking and buckling or  
14 blistering of shingles, are those things that  
15 could be caused by a hurricane?

16 A. You might. You get some cracking,  
17 possibly. You get some lift. But typically  
18 when an older shingle appears, it's kind of  
19 buckled around the edge. It's curled. You  
20 will get some blistering. But, typically,  
21 that is not a sign of new damage. It's a sign  
22 of an older shingle.



1           Q.     Now, an older shingle is more  
2     susceptible to cracking when it's lifted up  
3     than a newer shingle. Right?

4           A.     Typically, because a shingle  
5     becomes brittle over time, more brittle over  
6     time.

7           Q.     Right. But the lifting up of the  
8     shingle is something that the storm could do.  
9     Right?

10          A.     Yes.

11          Q.     And so the cracking of the shingle  
12     could have been caused by the storm even  
13     though it was old.

14          A.     Potentially, yes.

15          Q.     And FEMA would still call that a  
16     deferred maintenance roof because the shingle  
17     was brittle to start off with because it was  
18     old.

19          A.     I don't know that. If the  
20     shingles were worsened, if they were torn off,  
21     if they were lifted and cracked and pulled  
22     back that was evidence of new damage, then

1 FEMA would look at the replacement of shingles  
2 of that particular area if it created a  
3 habitability issue for the applicant. They  
4 wouldn't go in and replace the entire roof  
5 which may be a 30-year-old roof.

6 Q. But you agree that this takes some  
7 real investigation to determine on these roofs  
8 what was the damage that was caused by the  
9 storm and what was the damage that was  
10 preexisting.

11 A. I can speak for myself in terms of  
12 it's evident. I mean it's not -- a trained  
13 inspector can look at it and say, "That is an  
14 older roof" or "That is a newer roof." So I  
15 mean it depends on the type of damage that  
16 occurred as to how much investigation has to  
17 go on to determine the actual cause of damage  
18 or whether or not it was preexisting.

19 Q. And I'm just asking you to go into  
20 detail about what kinds of things that you  
21 look for to determine whether it's preexisting  
22 or disaster-caused.

1 MS. WELLS: I'm going to object  
2 because it's been asked and answered.

3 THE WITNESS: Again, I would look  
4 at whether or not there is buckling, cracking,  
5 lifting, blistering, curled edges, shrinkage  
6 of the shingle. That's what I would look at  
7 to estimate whether or not that is an older  
8 roof.

9 BY MR. WESEVICH:

10 Q. All of these things that you just  
11 listed are easily documented by a photograph.  
12 Correct?

13 A. Possibly. It depends. It depends  
14 on the angle of the photograph. It depends on  
15 the clarity of the photograph. It could  
16 depend on several things. If you get a very  
17 close-up picture of the roof, you could  
18 probably make that distinction.

19 Q. But can you see it with your eye  
20 from far away then?

21 A. How far away? If it's a single  
22 story house --

1           Q.     I mean if you can see it enough to  
2     make the judgment call as to deferred  
3     maintenance, then why can't you photograph it?

4           A.     As I say, I don't know the clarity  
5     of the camera they're using, how far away they  
6     are. Certainly if I was there and I can see  
7     it, I can make a call. If I make a picture of  
8     it and it's a dark roof, you're just going to  
9     see gray, you're just going to see dark.  
10    You're not going to see detail.

11          Q.     Does FEMA ever do anything to  
12    consult roofing experts about how inspectors  
13    ought to be trained to discern which roofs are  
14    to be categorized as deferred maintenance?

15          A.     I'm not aware of how Inspection  
16    Services reaches out to any of the industry  
17    experts. I don't know.

18          Q.     FEMA doesn't have an area of  
19    deferred maintenance for roofs. Correct?

20                 MS. WELLS: Object to the form of  
21    the question.

22                 BY MR. WESEVICH:

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1           Q.     I'm sorry. I wasn't specific  
2 enough. On the ACE pen tablet it lists  
3 several areas of deferred maintenance.

4           A.     Yes.

5           Q.     And one of them, roofs is not  
6 among them.

7           A.     I'm not sure. I'd have to verify  
8 that. They're broken up into different  
9 categories.

10          Q.     I'm looking at Page 5042.

11          A.     Yes.

12          Q.     This lists on the pen tablet  
13 screen all the areas of deferred maintenance.

14          A.     Yes.

15          Q.     Are you able to tell me whether  
16 one of those is roof?

17          A.     I'm not quite sure. It's hidden  
18 by the square as to whether or not there is  
19 any additional categories where it's broken up  
20 by windows and doors.

21          Q.     So if you have a disaster where  
22 you're expecting a lot of roof damage claims,

1 does FEMA do anything special to train the  
2 inspectors regarding roofs?

3 A. No. They are trained to, if they  
4 know that -- they're trained to go out and  
5 capture the disaster-related damage. If we  
6 know that in a particular disaster certain  
7 elements might be more evident, they would  
8 highlight that for the inspector, saying, "Pay  
9 more attention to foundations. Pay more  
10 attention to the type of structure." But  
11 there's nothing that would tell them to do  
12 things necessarily differently. It would  
13 bring to their attention areas of interest  
14 that they may want to emphasize more of.

15 Q. Looking at Page 5131 under the  
16 heading of "General," that was filed as  
17 Document 78-10.

18 A. Excuse me. You want me to take a  
19 look at the general?

20 Q. The paragraph under the heading  
21 "General."

22 A. Yes.

1           Q.     Are you familiar with this  
2 language?

3           A.     I'm familiar with the concept.  
4 These were written by PaRR for the inspectors.

5           Q.     This is actually a FEMA document.  
6 Right? A FEMA-written document.

7           A.     I'm sure it was done in  
8 conjunction with FEMA. I don't know. This is  
9 for the PaRR inspectors.

10          Q.     I think you've turned ahead. If  
11 you look at Page 1 of that document, it's a  
12 FEMA-written document by the NPSC.

13          A.     Oh. I apologize.

14          Q.     You need to turn two more pages --  
15 this way.

16          A.     Sorry about that.

17          Q.     That's a FEMA-published document.  
18 Correct?

19          A.     These are inspection guidelines  
20 that are specific for the disaster which was  
21 based upon the inspector's manual. So this is  
22 the specific document for that disaster on

1 providing instruction to the inspectors, yes.

2 Q. And how did this language, how was  
3 this language developed under "General"?  
4 Based on what was it developed and by who?

5 A. It's developed at the NPSC through  
6 Inspection Services. I don't know who the  
7 actual author is. It's probably done in  
8 conjunction with several individuals,  
9 including inspection supervisors, inspection  
10 program. But it's just the general  
11 instruction to inspectors for this particular  
12 event.

13 Q. But this document is approved by  
14 Headquarters, the template for this document.  
15 Right?

16 A. It's approved by FEMA, yes. I  
17 couldn't say it's approved by Headquarters.  
18 Headquarters participates in the Inspection  
19 Services calls that take place for the event.  
20 And so we're familiar with the document as it  
21 is laid out for the inspectors for that event.

22 Q. Let's look at Page 5395. And this



1 is the same kind of template of the document  
2 that you're looking at that has the language  
3 under the heading "General" which was filed as  
4 document 78-10. This Page 5395 is the same  
5 document that you looked at as 78-10. It's  
6 just that this is a template that has been  
7 subject to a management review on the bottom  
8 left-hand corner, and it has a date 08/31/11.

9 A. Yes.

10 Q. What does that mean?

11 A. That would mean that this is  
12 produced at the Virginia National Processing  
13 Services Center, and the management review  
14 would have been through the Inspection  
15 Services staff who manage the Inspection  
16 Services. This is the template document for  
17 the inspectors that is filled out for any  
18 particular event declared of which the  
19 inspections would be issued to the contract  
20 inspectors.

21 MS. WELLS: May I just clarify.  
22 Was this Exhibit A, again?

1 MR. WESEVICH: That's Exhibit B.

2 MS. WELLS: Exhibit B, okay.

3 Thank you.

4 BY MR. WESEVICH:

5 Q. This document you keep at the  
6 ready at FEMA in case there's a disaster.  
7 Then you fill in all the blanks for this  
8 document. Correct?

9 A. With Inspection Services at the  
10 NPSC, yes.

11 Q. Getting back to this language in  
12 "General" that we were discussing on Page  
13 5131, you write, "It's not uncommon for new  
14 leaks to occur through older deferred  
15 maintenance roofs, to be blown up under  
16 shingles, through vents, et cetera."

17 A. Yes.

18 Q. But new leaks would be caused by  
19 the disaster. Correct?

20 A. It could be. But if the new leaks  
21 were because the roof was deferred, it may not  
22 affect the habitability of the home. And I

1       can't talk damage without habitability because  
2       FEMA only awards assistance based on the  
3       habitability of the home.

4               Q.       Right. So to get repair  
5       assistance, you have to meet these elements.  
6       Number 1, it has to, the home has to be an  
7       owner-occupied primary residence.

8               A.       (Nodding.)

9               Q.       Number 2, the damages have to be  
10       disaster related.

11              A.       Yes.

12              Q.       Number 3, the repairs must be  
13       necessary to make the home safe, sanitary and  
14       functional.

15              A.       Correct.

16              Q.       If you meet all of those criteria,  
17       you get disaster assistance. Correct? You  
18       get repair assistance. Correct?

19              A.       That's the basic criteria, that,  
20       yes, you have to pass what they refer to as  
21       IDV, identification verification. It has to  
22       be a primary residence and you have to

1 demonstrate occupancy. You have to have  
2 sustained disaster-related damage. And then  
3 you also have to, the third one was they have  
4 to have sustained the damage.

5 Q. Safe, sanitary and functional.

6 A. Safe, sanitary and functional,  
7 which is a -- yes.

8 Q. So is it your testimony that  
9 habitability is a fourth criteria that you  
10 have to meet in every case?

11 A. No.

12 Q. Because if repairs are necessary  
13 to make the home safe, sanitary and  
14 functional, then habitability repair is  
15 required.

16 A. Yes. Habitability. Safe,  
17 sanitary and functional is a characteristic of  
18 habitability. It's part of the definition of  
19 "habitability."

20 Q. Right. Habitability is defined as  
21 three criteria. Either public utilities are  
22 out, the home is inaccessible or repairs are

1 necessary to make the home safe, sanitary and  
2 functional.

3 A. Correct.

4 Q. Getting back to this example on  
5 "General" --

6 A. Yes.

7 Q. -- if there are new leaks,  
8 necessarily the disaster-related element that  
9 we just discussed of the repair eligibility  
10 criteria, that's met if there's a new leak  
11 that causes damage inside the house.

12 A. Not if it's habitable. What this  
13 is saying is do not record the roof covering  
14 replace, which is your entire roof, put new  
15 shingles on the entire roof, if there is  
16 deferred maintenance, because it's not  
17 uncommon for new leaks to occur through older  
18 deferred maintenance roofs, to be blown up  
19 under shingles through vents. If there's  
20 damage to that roof, in other words, shingles  
21 were blown off of that roof and you had leaks  
22 as a result of those shingles being blown off,

1       then FEMA would repair the section of  
2       blown-off roof, not replace roof covering.

3               So it's a matter of, again, what  
4       this is saying is that just because you may  
5       have new areas in the room of water damage but  
6       there's no evidence that the roof was further  
7       damaged or shingles blew off, then you  
8       wouldn't replace that entire roof.

9               Q.       So I understood you to say earlier  
10       that a lot of inspectors out there are  
11       naturally inclined to favor the applicants.

12              A.       Yes.

13              Q.       So if an inspector goes out to a  
14       roof and says, "I don't know whether this is  
15       preexisting, you know, or whether the disaster  
16       messed up this roof. I just don't know. I  
17       think it's more likely than not that the  
18       disaster did it," does FEMA approve the  
19       inspector's not recording deferred maintenance  
20       and going ahead and recording the roof cover  
21       replace?

22              MS. WELLS: I'm going to object to

1 the form of the question.

2 Go ahead.

3 THE WITNESS: If there is evidence  
4 that the roof was damaged, in other words, if  
5 there is evidence that the roof is old and  
6 there's no damages caused by the disaster,  
7 then the inspector would mark that as  
8 ineligible because it's deferred maintenance,  
9 there is no evidence of new damage to that  
10 roof. So that's why it becomes the judgment  
11 call. Now, again, if there's damage to the  
12 roof on an older roof, the inspector would  
13 mark that damage as new damage, and they could  
14 become eligible for assistance.

15 BY MR. WESEVICH:

16 Q. My question is only about the  
17 judgment call. Inspector drives up, sees  
18 cracks on the shingles but says, "Those cracks  
19 are because the wind of this hurricane, you  
20 know, blew those shingles up and it cracked.  
21 The wind from the hurricane cracked them. And  
22 it's my judgment as an inspector that more

1       likely than not, I don't know for certain one  
2       way or the other whether those cracks existed  
3       before or whether the disaster was what made  
4       those cracks in the roof, but my guess is more  
5       likely than not that the disaster caused it."  
6       Does FEMA allow that inspector to go ahead and  
7       record that roof recover, replace as real  
8       property damage, as real property line items  
9       to be compensated?

10                   MS. WELLS: Object to the form.

11                   THE WITNESS: If the inspector  
12       determines that the new damage to the roof,  
13       the cracks to the shingles, the uplift of the  
14       shingles was caused by the event, then the  
15       inspector would record that as new damage. So  
16       I mean --

17                   BY MR. WESEVICH:

18               Q.       Well, you said was caused, if the  
19       inspector concludes that it was caused. My  
20       hypothetical is the inspector doesn't know.  
21       The inspector thinks more likely than not it  
22       was caused by the disaster.



1           A.       I don't know what the difference  
2       is. If you are saying that the judgment call  
3       of the inspector is that he goes out and says,  
4       "This looks like new damage to me. I'm going  
5       to record it as new damage" versus, you know,  
6       if there's no damage, no additional damage to  
7       the roof, if water came in on that one section  
8       but the rest of the roof, again, had no damage  
9       and there's no cracking or the entire roof is  
10      cracked, then, again, it would be is that a  
11      call on the inspector to determine is that  
12      preexisting condition. Now, again, if the  
13      inspector goes out and doesn't know and says,  
14      "That looks like new damage to me," he would  
15      mark it as new damage.

16           Q.       And FEMA would allow that to be  
17      paid, that new damage that you just described.

18           A.       If it affected the habitability of  
19      the home.

20           Q.       Even if the inspector was not sure  
21      that it was new damage, if the inspector just  
22      thought more likely than not.

1           A.       My response to that would be FEMA  
2 wouldn't know at the time what the inspector  
3 thought or didn't think. The inspector  
4 recorded it as new damage and FEMA is going to  
5 process based upon the inspector's report that  
6 it's new damage.

7           Q.       Are all old roofs deferred  
8 maintenance roofs?

9           A.       No. I couldn't say that 100  
10 percent certain.

11          Q.       So if a roof has a 30-year  
12 guarantee, FEMA would agree that it's possible  
13 for the roof to still be fully functional as  
14 it approaches that 30 years?

15                   MS. WELLS: Object to the form of  
16 the question.

17                   BY MR. WESEVICH:

18          Q.       Prior to the disaster.

19          A.       Potentially. If it's serving as a  
20 roof, yes. In other words, it's still in good  
21 condition and there's been no adverse impact  
22 to that roof that would otherwise indicate

1       that it can't stand up to the weather.

2               Q.       FEMA is not going to know one way  
3       or another simply by knowing the age of the  
4       roof is my question.

5               A.       It would be the condition of the  
6       roof.

7               Q.       You would have to look at  
8       something in addition to the age of the roof  
9       to judge it a deferred maintenance roof.

10              A.       Yes, yes. For clarity, you could  
11      have a fairly new roof on a very inexpensive  
12      shingle that within several years it could be,  
13      based upon the location, the temperature, the  
14      moisture and everything else, have  
15      deteriorated. So shingles come in various  
16      grades on how long they're expected to last  
17      under normal conditions. Conditions can vary  
18      which would impact the condition of the roof.

19              Q.       And the installation could also  
20      impact the condition of the roof as well.  
21      Correct?

22              A.       That is correct.

1 Q. Shingles are nailed in. Right?

2 A. Typically, yes.

3 Q. And if the pressure of the nail  
4 that goes in, that drives the shingle in is  
5 set too high, that nail will drive through the  
6 shingle and compromise its structural  
7 integrity, correct?

8 A. Typically, it could do that, yes.

9 Q. But FEMA doesn't ever go up on  
10 roofs.

11 A. No.

12 Q. So it would have no -- FEMA  
13 inspectors never go up on roofs.

14 A. Correct.

15 Q. There's a categorical prohibition  
16 for FEMA inspectors to go up on roofs.

17 A. Correct.

18 Q. So they would have no idea about  
19 whether a roof's structural integrity had been  
20 compromised by the way that the nails were  
21 installed in the roof.

22 A. No. They would not look at it in

1       that respect. They would look at it in terms  
2       of the damage that was caused by the event.  
3       We wouldn't get into whether or not that roof  
4       was put on or applied according to the  
5       manufacturer's specifications.

6               Q.       And it's not only the pressure of  
7       the nail that I just described that could  
8       compromise the integrity. It's also the  
9       placement of the nails and the shingles.

10              A.       It could, yes.

11              Q.       That could compromise the efficacy  
12       of that roof.

13              A.       It could, yes.

14              Q.       But FEMA has no way to distinguish  
15       whether the roof was installed correctly. It  
16       has no way to tell.

17              A.       It has no way to tell. There's no  
18       guidance as to what to tell the inspectors to  
19       go out and determine whether or not it was  
20       applied correctly.

21              Q.       So you have no idea when you make  
22       a deferred maintenance decision about whether

1 the roof had been installed correctly in the  
2 first place.

3 A. No. It's based upon the condition  
4 at the time the inspector is out there.

5 Q. To be clear --

6 A. And a judgment call.

7 Q. -- it's only based on a ground  
8 level eyeball of what the roof looks like.

9 A. That would be what the inspector  
10 would look at, yes, yes. Now, if I were an  
11 inspector, I would also ask the question how  
12 old is the roof. But it doesn't necessarily  
13 render a decision one way or another. What it  
14 does is it puts some perspective as to how old  
15 that roof is based upon the condition of what  
16 the inspector is viewing.

17 Q. But the inspectors do not record  
18 what they understand the age of the roof to  
19 be.

20 A. No, they don't. They're not  
21 required to.

22 Q. And they're not recording the type

1 of roof it is, whether it's a tile roof or a  
2 shingle roof, what have you.

3 A. I don't know if that is a current  
4 requirement. Typically, when I was inspecting  
5 -- I did a lot of inspections in Florida,  
6 which are tile roofs. Some were asphalt  
7 roofs. And I would put in comments, "It's a  
8 clay tile roof."

9 Q. Right. You can put anything you  
10 want. You can put anything you want.

11 A. Absolutely. There is no  
12 requirement, to my knowledge.

13 Q. And there's no place to record the  
14 type of roof.

15 A. Not specific, no.

16 Q. But there is a place to record the  
17 type of foundation of the house.

18 A. Yes, because foundations will vary  
19 according to structure and everything else,  
20 yes. However, in the line items, I believe  
21 there are several different categories of roof  
22 covering, whether or not it's asphalt, clay

1 tile, slate. There is line items that I  
2 believe get into more detail that if the  
3 inspector views damage to that roof that was  
4 disaster related, he would pick the line item  
5 to best describe what that roof composition is  
6 and award however much damage he observed, he  
7 or she observed.

8 Q. But if the judgment was deferred  
9 maintenance, the only thing that the ACE pen  
10 tablet allows to be recorded is a check on the  
11 word "general." There is no check on the word  
12 "roof." There is no description of the type  
13 of roof. There is no description of the age  
14 of the roof. There is no description of the  
15 reason for the deferred maintenance judgment.  
16 Correct? All that's true, right?

17 MS. WELLS: Object to the form.

18 THE WITNESS: As I say, I don't  
19 know. I thought I read somewhere in the  
20 inspection guidelines that roof was identified  
21 as an area of deferred maintenance. However,  
22 I did not see it in that box, but I don't



1 know. It was blocked by another block to  
2 determine whether or not there was additional  
3 categories underneath as you scrolled down in  
4 that box.

5 BY MR. WESEVICH:

6 Q. Well, FEMA has paper forms that  
7 are used by inspectors in case the pen tablets  
8 stop functioning. Correct?

9 A. Yes.

10 Q. And you produced those right here.  
11 And I'm looking at Pages 589 through 96. And  
12 this would list out all the categories that  
13 are listed in deferred maintenance here on  
14 Page 591. Right?

15 A. Yes. I would assume that that  
16 is--

17 Q. Right here in the areas of  
18 deferred maintenance, this list on Page 591.

19 A. Yes.

20 Q. Okay. So this document, 591,  
21 indicates that there's not even a category for  
22 roof for deferred maintenance.

1           A.       Yes.

2           Q.       That's correct, right?

3           A.       It does indicate that, yes.

4           Q.       So as I understand your testimony,  
5 if disaster-related damages are found in the  
6 judgment of the inspector, then the roof type  
7 might be recorded. But if in the inspector's  
8 judgment the roof was in poor condition prior  
9 to the disaster, then FEMA does not know what  
10 type of roof it is, does not even know that  
11 the roof was found to be deferred maintenance,  
12 does not know the reason why the inspector  
13 said the roof was deferred maintenance, knows  
14 nothing about it at all. Correct?

15          A.       According to this. There is no  
16 indication on the roof type or anything else  
17 or an indication of area deferred maintenance  
18 for roof.

19                   MR. WESEVICH: I think this might  
20 be a good time to take a break for lunch.

21                   (Whereupon, at 12:28 p.m., the  
22 deposition was recessed, to reconvene at 1:15

1 p.m., the same day.)

2 AFTERNOON SESSION 1:24 p.m.

3 BY MR. WESEVICH:

4 Q. Mr. Carleton, does FEMA spend less  
5 repair money if it tells inspectors, "Write  
6 deferred maintenance unless you're sure that  
7 it's not" as compared to if they tell  
8 inspectors, "You can find deferred maintenance  
9 on a more likely than not standard?"

10 MS. WELLS: Object to the form of  
11 the question.

12 THE WITNESS: I'm not sure if I  
13 understand your question, because the  
14 instructions to the inspectors are to go out  
15 and record disaster-related damage as well as  
16 identify other damage that exists. So it's  
17 not -- FEMA doesn't give instructions to  
18 inspectors on how they would determine  
19 eligibility. An inspector's job is to go out  
20 and record what they see.

21 BY MR. WESEVICH:

22 Q. But the inspectors are told this

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1 on Page 104, right? This is what they're  
2 told, right? Under that heading "Deferred  
3 Maintenance," that is what the inspectors are  
4 told, right?

5 MS. WELLS: Object to the form of  
6 the question. Told what? Told what he said  
7 or told what you said?

8 BY MR. WESEVICH:

9 Q. Are the inspectors told what is  
10 written under the heading "Deferred  
11 Maintenance"?

12 A. That is part of their training.  
13 So I am sure it is covered as well as it is in  
14 the inspector manual. But that doesn't have  
15 anything to do with eligibility for  
16 assistance. That is how to record damage that  
17 they see at the time that could be referred to  
18 as deferred maintenance.

19 Q. And the way that they record the  
20 damage that they see at the time is used to  
21 decide eligibility. Correct?

22 A. They don't make that decision.

1           Q.     Right. But the way that they  
2 record that -- the eligibility determination  
3 is based on the information that they do  
4 record.

5           A.     That is correct.

6           Q.     And this tells them how to record  
7 the information. Correct?

8           A.     This tells them what the examples  
9 of what deferred maintenance is and what  
10 categorizes deferred maintenance, yes.

11          Q.     This tells them whether to check  
12 one of the boxes on the ACE 3 pen tablet under  
13 "Deferred Maintenance" or whether to record  
14 damages under line items. Correct?

15          A.     No, this does not say that. What  
16 they are instructed to do is to go out and  
17 record damages. And their focus is to record  
18 damages that are caused by the event. If they  
19 are to capture the full inspection of that  
20 property, they are to record other damage as  
21 they see that is not caused by the event which  
22 can refer to as preexisting condition or

1 deferred maintenance. But they are not told  
2 to actually go out and look for the deferred  
3 maintenance. If it exists, they will record  
4 it. If it doesn't exist and they only have  
5 disaster-related damage, they would record  
6 that.

7 Q. So that the record is clear, when  
8 you said the word "event" during this entire  
9 deposition you've meant the disaster. Right?

10 A. The disaster declaration, yes.

11 Q. It's a common Agency usage, right,  
12 that you call the disaster the event? Right?

13 A. Yes.

14 Q. But this paragraph that we've been  
15 talking about on Page 104, it talks about how  
16 to record deferred maintenance. Correct?

17 A. It does say when to record it and  
18 gives some examples of what that is referring  
19 to.

20 Q. That's the only question. It does  
21 say how to record deferred maintenance,  
22 correct? And it also says --

1 MS. WELLS: Objection. That is  
2 not what he testified. That mischaracterizes  
3 his testimony.

4 BY MR. WESEVICH:

5 Q. Okay. Does this tell you how to  
6 record deferred maintenance?

7 A. How to? It describes what it is  
8 and it describes when to categorize certain  
9 examples that are mentioned here as deferred  
10 maintenance. So it doesn't tell them. It  
11 just gives examples of how to do it when they  
12 come across it.

13 Q. When you just testified that it  
14 describes what it is, the word "it" is  
15 deferred maintenance, it describes what  
16 deferred maintenance is.

17 A. In some examples that are provided  
18 in that paragraph, yes, which is not inclusive  
19 of everything.

20 Q. Okay. And where it says, "The  
21 listing of deferred maintenance items worsened  
22 by the storm should never be speculative," do

1       you see that, the very last sentence?

2               A.       I do see that.

3               Q.       When you say the listing, do you  
4       mean the listing on the real property line  
5       items?

6               A.       I believe what they are referring  
7       to is the listing of the deferred maintenance  
8       as it appears in the box on the ACE 3  
9       software, the general, the categories of it.  
10       So in other words, you should never guess.  
11       You have to try to verify that was the damage  
12       caused by the event and if it wasn't, was it a  
13       result of preexisting condition or deferred  
14       maintenance.

15              Q.       But this last sentence, it's  
16       talking about items that were worsened by the  
17       disaster. Correct? It's not talking about  
18       deferred maintenance.

19              A.       Right. So if it's worsened by the  
20       event, then they could be eligible for the  
21       assistance if it affected the habitability of  
22       the home. So in other words, you wouldn't see



1 deferred maintenance and yet record damages  
2 for the same item. It's either eligible or  
3 not eligible based upon the habitability of  
4 the home.

5 Q. Does FEMA authorize inspectors to  
6 list items under the real property line items  
7 in the ACE 3 tablet if they were more likely  
8 than not disaster related?

9 A. Could you clarify?

10 Q. If the inspector believes, if the  
11 inspector is not certain as to whether  
12 something was preexisting, a damage item is  
13 preexisting, does FEMA authorize them to list  
14 that item on the real property line items?

15 A. As potential eligible items for  
16 repair?

17 Q. Yes.

18 A. Is that what you are referring to?

19 Q. Yes.

20 A. Yes. If it is the opinion of the  
21 inspector that that item was damaged as a  
22 direct result or made worsened by the

1 disaster.

2 Q. Made significantly worsened by.

3 A. Yes.

4 Q. When are the inspectors told that?

5 A. It is part of their training. It  
6 is part of their background. In other words,  
7 the inspector is to go out and look at, in  
8 their judgment of what was disaster-related  
9 damage or not disaster-related damage. We've  
10 seen through much of this manual in terms of  
11 what is considered deferred maintenance or  
12 what would be considered eligible line items.  
13 What determines whether or not FEMA is going  
14 to award will be based upon the overall  
15 habitability of the call for the home, because  
16 you may suffer damage in a home but your home  
17 is still habitable and FEMA would not award on  
18 that assistance.

19 If I could clarify. If an  
20 inspector identifies line items that in his  
21 opinion were damaged by the event, he's going  
22 to record that. And if the overall

1       habitability of the home is no, FEMA would pay  
2       that out and not know what went on in the mind  
3       of the inspector. The inspector only recorded  
4       that damage as he or she saw fit and  
5       identified it as being disaster related or  
6       significantly made worsened by the event,  
7       therefore, could be eligible for assistance  
8       when FEMA makes that determination.

9               Q.       So as I understand your testimony,  
10       FEMA does authorize inspectors to list real  
11       property items as eligible for repair payment  
12       if the inspector is unsure about whether the  
13       disaster caused the damage or whether the  
14       damage was preexisting.

15               MS. WELLS: Object to the form of  
16       the question.

17               THE WITNESS: FEMA is not going to  
18       know what goes on in the mind of the inspector  
19       when the inspector is making that call. FEMA  
20       is going to go by what is recorded by the  
21       inspector as being disaster-related damage or  
22       not.

1 BY MR. WESEVICH:

2 Q. I understand that the software  
3 that FEMA has developed does not record this  
4 information. My question is what does FEMA  
5 authorize the inspectors to do? Are the  
6 inspectors allowed by FEMA to record an item  
7 in the real property line items as eligible  
8 for repair assistance if the inspector is  
9 unsure as to whether that item is preexisting  
10 or was made significantly worse by the  
11 disaster?

12 MS. WELLS: I'm going to object to  
13 the form, again.

14 THE WITNESS: It's not a  
15 determination of does FEMA authorize it. FEMA  
16 is not going to know. The inspector is making  
17 a call and the inspector has already made the  
18 call that in his or her opinion that damage  
19 was caused by the event and is going to mark  
20 it as such. And, therefore, FEMA would award  
21 if the overall habitability call is no. So in  
22 other words, the line item doesn't say, "Is

1       this your best guess or not?" It's basically  
2       this is what they saw as damage. And if the  
3       home is uninhabitable, FEMA would award based  
4       upon what that inspector saw.

5                       BY MR. WESEVICH:

6               Q.       Does FEMA tell the inspectors  
7       anything else other than what's recorded on  
8       Page 104 under the heading "Deferred  
9       Maintenance," does FEMA tell the inspectors  
10      anything else about how to record damage that  
11      they see?

12              A.       Not that I'm aware of. If this  
13      comes from the inspector's manual, I know that  
14      there is additional information in the  
15      training material that goes into different  
16      examples of this. But there is no other  
17      written guidance that I'm aware of that would  
18      tell inspectors what to do in recording  
19      disaster-related damage.

20              Q.       And does FEMA expect inspectors to  
21      apply that standard that's written there under  
22      the heading "Deferred Maintenance" on Page

1 104?

2 MS. WELLS: Object to the form.

3 THE WITNESS: They would expect  
4 inspectors who have received the training to  
5 be able to go out and understand what would be  
6 disaster-related damage and what would be  
7 preexisting or deferred maintenance.

8 BY MR. WESEVICH:

9 Q. Now, you had mentioned that a lot  
10 of the inspectors have a construction  
11 background. Is that correct?

12 A. To the best of my knowledge, yes.

13 Q. How many of them? What  
14 percentage?

15 A. I don't know.

16 Q. Is any type of construction  
17 background a requirement for becoming a FEMA  
18 inspector?

19 A. Not that I'm aware of. But they  
20 do look for people that have a background in  
21 construction or, you know, knowledge of  
22 construction.

1 Q. How?

2 A. Pardon me?

3 Q. How? When you say "they," you're  
4 talking about PaRR and Parsons Bickerstaff,  
5 the two contractors. So it's PaRR and PB?

6 A. PB, Parsons Brinckerhoff.

7 Q. Oh, I'm sorry. So those are the  
8 people who actually hire the individual  
9 inspectors who go out to houses. Correct?

10 A. Yes, they do.

11 Q. And how do you know that that's  
12 what they look for?

13 A. I don't know. I do know that when  
14 I was an inspector, they were looking for  
15 people that had construction background. I do  
16 know that they look at the experience of the  
17 people that they are hiring, but it's up to  
18 the inspection contractors to hire those  
19 inspectors.

20 Q. But you have no idea about what  
21 qualifications they require of the applicants?

22 A. No. I do not know what standards

1       they apply.

2               Q.       Are the inspectors required to be  
3       licensed contractors?

4               A.       No, not to my knowledge, no.

5               Q.       Because that's a pretty high  
6       standard.   Right?

7               A.       That is high standard, and it also  
8       varies from state to state.

9               Q.       If an inspector determines that a  
10       damaged part of a home is to be classified as  
11       deferred maintenance, the only thing that's  
12       recorded is a check box in that areas of  
13       deferred maintenance.   Is that correct?

14              A.       That would be required, and then  
15       further explanation can be provided in  
16       comments.

17              Q.       But there's not a method other  
18       than comments for the inspector to say what  
19       the reason for the deferred maintenance  
20       decision was.

21              A.       No.   The reason being is that the  
22       inspector is there to record the damage that



1 was the direct result of the disaster. If  
2 there is additional damage there to complete  
3 the inspection, he or she would record other  
4 damage that they viewed and determine whether  
5 or not it was a result of the disaster. So  
6 they're not specifically going out looking for  
7 deferred maintenance or preexisting condition.  
8 Their job is to go out and look for  
9 disaster-related damage. And if other damage  
10 exists, then they have to apply whether or not  
11 based on their judgment it was caused or made  
12 worsened by the disaster.

13 Q. Who decides appeals? Describe for  
14 me how appeals are decided when an applicant  
15 is dissatisfied with FEMA's repair decision.

16 A. The applicant writes an appeal to  
17 FEMA and it goes to an appeals group, an  
18 appeals group, I believe, made up of your  
19 managers, supervisors and caseworkers. And  
20 that appeal is reviewed. And it's all manual  
21 at that point. And when I say manual, the  
22 case is reviewed, all the notes are reviewed,

1 the inspection is reviewed and the  
2 determination is reviewed, and that is done  
3 manually.

4 And then a decision is rendered,  
5 sent up to the -- I don't know if they're  
6 referred to as team lead or supervisor, who  
7 then approves and then the appeal is either  
8 overturned or granted. So it's a separate  
9 group that handles appeals.

10 Q. Now, when you say that appeals are  
11 manually determined as opposed to  
12 auto-determined by the computer, the initial  
13 decisions, some of them are manually  
14 determined and then some of them are  
15 auto-determined by NEMIS. Correct?

16 A. The majority of initial decisions  
17 are based upon auto-determination. I don't  
18 know what the current rate of approval is on  
19 auto-determinations. I do know that it is in  
20 the mid-90 percentile of cases that are  
21 auto-determined. Only in cases that get hung  
22 up in the computer where something wasn't

1 correct or got hung up or jammed in the  
2 computer would that case be reviewed manually  
3 to be processed.

4 Q. As I understand, what you say is  
5 NEMIS is set up to issue an auto-determination  
6 in all cases, but some of them get hung up  
7 among the various business rules in NEMIS and  
8 those cases are manual-determined.

9 A. Yes. In other words, they would  
10 go into a special handling queue. If  
11 something were to be looked at that didn't fit  
12 the current business rule, it would go into  
13 another queue to be manually reviewed and  
14 processed. It would either get hung up or  
15 there was missing information or something  
16 that was different in that system.

17 So we would also sometimes run a  
18 special handling queue if something else were  
19 to change during the disaster and we needed to  
20 go into the system, manipulate the system.  
21 Then that would maybe go into a different  
22 special handling queue for those cases if a

1       certain question was answered away so that it  
2       would be manually reviewed. But NEMIS is set  
3       up to auto-determine as much information as  
4       possible.

5               Q.       And there's a flag that the  
6       inspector can check to request manual  
7       determination even on the initial decision.  
8       Is that correct?

9               A.       That's correct. And I believe it  
10      goes back to the contractor's host. In other  
11      words, that's before it enters into NEMIS.  
12      The inspector can flag for someone in the  
13      Inspection Services to take a look at it  
14      before it gets entered back into NEMIS.

15              Q.       When you talk about Inspection  
16      Services, are you talking about somebody at  
17      PaRR to look at it or are you talking about  
18      somebody in FEMA to look at?

19              A.       Someone in PaRR.

20              Q.       So when the inspector checks a  
21      manual flag, that inspector is telling PaRR  
22      that before this inspection is sent to FEMA,

1       somebody in PaRR management should look at  
2       this inspection.

3             A.       Typically, yes.

4             Q.       Are there rules for when that  
5       manual checked flag should be used?

6             A.       It would depend on the  
7       circumstances of the disaster. In other  
8       words, in some large events a new decision  
9       might come down or we're not going to process  
10      a certain, a particular instance. We may ask  
11      the inspector to flag for review. If the  
12      other situation might be that the inspector  
13      just wants another set of eyes to take a look  
14      at the information being gathered before it's  
15      sent in, the inspector could flag that for  
16      supervisory review.

17            Q.       Was anything ever published saying  
18      that inspectors in Disaster 1780 were supposed  
19      to flag certain cases for PaRR review?

20            A.       Not that I'm familiar with. I've  
21      read the Inspection Services guidelines for  
22      that particular disaster, but I do not recall

1 anything being in there on specifically  
2 indicating when a case should be reviewed,  
3 manually flagged.

4 Q. And the Inspection Services  
5 guidelines that you are referring to, is that  
6 Page 5124?

7 A. Yes, that is.

8 Q. That's the document. And if there  
9 were specific instructions to flag certain  
10 items for review, they would appear in this  
11 document?

12 A. Not necessarily. If there is an  
13 overarching decision that they're waiting for  
14 Headquarters to make and we're saying, you  
15 know, "Hold these before so that we can, you  
16 know, render a policy or a decision or  
17 something to that disaster," they may ask to  
18 flag them. But typically it doesn't show up  
19 in this particular document. It may be a  
20 verbal to the inspectors or a memo to the  
21 inspectors, you know, "Headquarters is looking  
22 at this particular issue. Before sending on

1 to NEMIS, you know, flag for host review."

2 And it could be for any number of reasons.

3 Q. And there could be addenda to this  
4 document. Correct?

5 A. There could be addenda to this  
6 document, yes.

7 Q. And in most disasters there do end  
8 up being addenda to these documents.

9 A. Yes, there are.

10 Q. And where are the addenda to this  
11 document for Disaster 1780?

12 A. I'm not sure if any were issued.

13 Q. Do you know definitively yes or no  
14 whether addenda were issued in this disaster?

15 A. I do not know definitively.

16 Q. How would you find out?

17 A. I would have to call out to the  
18 Inspection Services group at the Virginia NPSC  
19 to determine if any additional addenda were  
20 provided.

21 Q. Did anybody do that prior to this  
22 deposition?

1           A.       I did not.

2           Q.       Do you know if anybody did?

3           A.       I do not know.

4           Q.       In Interrogatory 11, in your  
5 response to Interrogatory 11 you list several  
6 people who helped you prepare documents for  
7 this. Do you know whether any of those people  
8 -- well, here, let me show you the answer.  
9 You can tell me whether any of these people  
10 did. I'm looking at Page 5335. And you'd  
11 indicated that Cindy Atkins, David Ritchie,  
12 Chip Pinckney and Todd Milliron helped you  
13 gather documents that were responsive to our  
14 document requests.

15          A.       Yes.

16          Q.       Do you know if any of them tried  
17 to locate all the addenda?

18          A.       Yes. I'm sure of it because of  
19 the fact that you have some Inspection  
20 Services supervisor and task monitors  
21 associated with it. And if the request was  
22 made for all documentation, they would have



1 pulled every documentation available regarding  
2 this disaster. Cindy Atkins is also a program  
3 specialist at the NPSC unassociated with the  
4 Inspection Services group and she, too, would  
5 have also made sure that all documentation was  
6 gathered.

7 Q. Verbal instructions are given to  
8 inspectors pretty much daily. Right?

9 A. It's given to them when  
10 information needs to be exchanged with them.  
11 Sometimes it doesn't happen daily. Sometimes  
12 it happens frequently if there is a  
13 circumstance within that disaster that needs  
14 attention or correction or something of that  
15 nature.

16 Q. And where are those recorded,  
17 those daily transmissions to inspectors?

18 MS. WELLS: I'm going to object to  
19 the form. Verbal communications and  
20 transmissions aren't necessarily the same,  
21 but.

22 THE WITNESS: And I was going to

1 say that would have been communicated through  
2 the Inspection Services. I don't know if  
3 anything would have been issued in memo or  
4 not. I don't know that.

5 BY MR. WESEVICH:

6 Q. So going back to the appeals  
7 group, how many people were in the appeals  
8 group for Disaster 1780?

9 A. That I don't know. I would have  
10 to find out.

11 Q. It wouldn't be 1,000 people?

12 A. No.

13 Q. Would it be 100 people?

14 A. Not that I'm aware of, no.

15 Q. Roughly, how many, would you say?

16 A. I would say depending upon the  
17 other activity and if it's going to be  
18 specific to 1780, 20, less than 20. I'm not  
19 exactly sure.

20 Q. And do these people have other  
21 jobs or were they just appeals officers?

22 A. They may have other jobs but if

1       appeals come in, I mean they are -- there's a  
2       lot of movement within the NPSC depending upon  
3       the workload. So there are dedicated people  
4       that do appeals when appeals come in. But  
5       they may in slower times have other positions  
6       that they can work on.

7               Q.       You mentioned a team leader for  
8       the appeals.

9               A.       I wasn't sure of how they  
10       categorize what their job titles are anymore,  
11       but there's usually a supervisor or a team  
12       lead overseeing a group of people doing  
13       appeals.

14              Q.       Do you know who that person was  
15       for Disaster 1780?

16              A.       No, I don't.

17              Q.       How would you find out?

18              A.       I would have to call out and find  
19       out who it was for that disaster, who it was  
20       at the time. There has been turnover in the  
21       NPSC since 2008, so I'd have to find out who  
22       it was.

1           Q.       Describe for me what happens when  
2       someone sends in a letter saying, "The  
3       disaster damaged my home but I didn't get  
4       repair assistance." How does the appeals  
5       process work in that?

6           A.       Well, in the initial letter, the  
7       award letter that goes out, it would indicate  
8       what they were eligible to receive in  
9       assistance. And that letter describes if you  
10      disagree with FEMA's decision, here's what you  
11      need to do. And it provides some information  
12      that they would need to provide back to FEMA  
13      in an appeal for FEMA to look at their case  
14      and review what they're looking for.

15                 Typically, if they did not receive  
16      funds for damages that they claimed, they  
17      would also ask for inspectors, an estimate  
18      from a licensed contractor and indication that  
19      it was caused by the event, and then they  
20      would look at that information, that  
21      additional supplemental information and look  
22      at the case, look at the notes, look at the

1 inspector's report, and determine whether or  
2 not something was either overlooked or it was  
3 addressed in the initial report.

4 And if, in fact, there's a  
5 discrepancy in what the individual is claiming  
6 versus what was in the inspection report, more  
7 often than not the Inspection Services would  
8 issue the inspection to another inspector to  
9 go out and complete a new inspection. That  
10 inspection will come in and would be compared  
11 to the first inspection. And if there is  
12 discrepancy, they could award additional funds  
13 based upon the new inspection.

14 Q. But what happens if the applicant  
15 writes in, "The disaster damaged my roof," but  
16 that the "General" check box is checked for  
17 deferred maintenance? What happens then?

18 A. General. It depends. If the  
19 individual writes in saying that "I have roof  
20 damage," but in the inspection notes it would  
21 have "General," and then if they looked in  
22 comments, it says "Roof was deferred

1 maintenance," then the individual would not,  
2 that appeal would not be overturned. The  
3 initial decision would not be overturned.

4 If the individual submitted  
5 documentation from a contractor indicating  
6 that there is roof damage and it was caused by  
7 the event, then another inspector would have  
8 been sent out to determine and try to verify  
9 that again. Now, again, since an inspector  
10 does not get up on the roof, they would look  
11 for any residual damage as a result of that  
12 roof being damaged. And that's when I  
13 described earlier which would be the inspector  
14 would be looking inside the house for any  
15 damage that may have occurred based upon the  
16 condition of that roof.

17 Q. Now, does FEMA require an estimate  
18 from a licensed contractor?

19 A. It says from a licensed  
20 contractor. I believe it does say licensed.  
21 It can also require an estimate or an opinion  
22 from a local official. In other words, local

1 officials might be able to determine that  
2 "Yes, it blew through here and, yes, there is  
3 sufficient damage to this house. It's been  
4 tagged. A person can't be living here until  
5 repairs are made." Then that would implement  
6 or suggest a new inspection if something was  
7 overlooked in the initial inspection.

8 Q. Right, but official inspections  
9 are not available to all disaster survivors.  
10 Right? I mean many local governments just  
11 don't have that capacity. Correct?

12 A. That's right.

13 Q. So in that case the only way that  
14 an applicant could challenge a deferred  
15 maintenance finding by a FEMA inspector is to  
16 hire a local contractor.

17 A. Potentially, but they wouldn't  
18 have -- the call would have been insufficient  
19 damage, not a call of deferred maintenance,  
20 because the code, the eligibility code would  
21 be insufficient damage because the inspector  
22 did not find habitability damages that would

1 render that person eligible. So the call  
2 would be insufficient damage from FEMA, and it  
3 could include minor damage caused by the event  
4 as well as damage that was preexisting or by  
5 deferred maintenance.

6 Q. Right. The letter that is sent to  
7 applicants when a deferred maintenance finding  
8 has been made by an inspector, that letter  
9 never mentions deferred maintenance.

10 A. No, it doesn't.

11 Q. All it says is, as you described,  
12 insufficient damage which could mean, as I  
13 understand, one of three things. It could  
14 mean that the damage was not substantial  
15 enough, that it didn't meet the \$50 rule or it  
16 could mean deferred maintenance or it could  
17 mean that even though the disaster caused  
18 damages, they didn't affect the safe, sanitary  
19 and functional capacity of the house. Right?

20 A. You're leaving out habitability.

21 Q. But that's safe, sanitary and  
22 functional.



1           A.       But there's an overall  
2       habitability call which takes into account the  
3       damages that was viewed which would include  
4       those categories that you just described,  
5       either minor damage, deferred maintenance or  
6       -- minor damage would be defined as it didn't  
7       meet the threshold of \$50 and it did not  
8       affect the habitability of the home as well as  
9       the deferred maintenance as well as the safe,  
10      sanitary and functional criteria. So those  
11      are reflective in an overall habitability  
12      determination as to whether or not FEMA would  
13      grant that award.

14           Q.       So the letter that's sent to the  
15      applicants, it doesn't distinguish among any  
16      of those. Correct?

17           A.       No. It does distinguish and it  
18      does mention that it does not affect the  
19      habitability of your home.

20           Q.       But by reading -- well, let's look  
21      at the letter. Let's look at Page 2956.

22           A.       Yes.

1           Q.     This is the letter that we've been  
2     discussing.   Correct?

3           A.     Yes.

4           Q.     And it doesn't tell the applicant  
5     whether deferred maintenance affected their  
6     eligibility.

7           A.     No, it does not.

8           Q.     It does not tell the applicant  
9     whether a finding of deferred maintenance was  
10    made.

11          A.     That is correct.

12          Q.     It doesn't suggest anything about  
13    deferred maintenance to the applicant.

14          A.     No.

15                 MS. WELLS:   Objection; asked and  
16    answered.

17                 THE WITNESS:   No, it does not  
18    because this has to do with eligibility  
19    determination not necessarily focusing in on  
20    the elements that were preexisting.   In other  
21    words, ineligible, insufficient damage is a  
22    call being made based upon disaster-related

1 damages that were not found at this home.

2 There may have been other damages but this is  
3 based upon the regulation of which FEMA would  
4 only provide assistance to individuals who  
5 suffered disaster-related damages. Based upon  
6 the inspection, the inspector did not find any  
7 disaster-related damages that would render the  
8 home unsafe.

9 Q. But the letter does not inform  
10 applicants that in an inspector's judgment the  
11 damage that was suffered by the house was  
12 preexisting.

13 A. No, because that is not what FEMA  
14 pays on and that is not the intent of the  
15 program. The program is to pay on elements  
16 that were damaged as a direct result of the  
17 disaster.

18 Q. Right. But the inspectors do make  
19 a judgment about whether damages are  
20 preexisting and the letter does not inform the  
21 applicants anything about what judgment was  
22 made by the inspector in the case.

1 MS. WELLS: Object to the form of  
2 the question.

3 THE WITNESS: Again, the inspector  
4 is to go out and determine what is disaster  
5 related and what is not. So an inspector is  
6 instructed to go out and make sure that they  
7 look at the entire structure and record what  
8 they see and make a determination and judgment  
9 as to whether or not it was disaster related,  
10 preexisting or deferred maintenance.

11 Our letters are based upon our  
12 eligibility criteria. In order to be  
13 eligible, it has to be disaster-related  
14 damage. So we have codes in here that are  
15 specific to disaster-related damage. And what  
16 this is saying, there is insufficient damage,  
17 meaning that there is insufficient damage  
18 caused by the event that rendered you  
19 ineligible.

20 Q. But why wouldn't FEMA include a  
21 notice to the applicants saying, you know, "In  
22 the inspector's judgment whatever damages

1 happened to your house, they preexisted"? Why  
2 wouldn't FEMA tell applicants that much?

3 MS. WELLS: Object to the form of  
4 the question.

5 THE WITNESS: I also don't think  
6 we're required to. What we are required to do  
7 is provide information as it was directly  
8 resulted from the event, from the disaster.  
9 So FEMA is to go out and record and make an  
10 eligibility determination based upon what was  
11 a direct result of the disaster. We would  
12 have to develop all new sets of criteria, sets  
13 of letters informing them of everything that  
14 the inspector saw that wasn't disaster  
15 related; whereas, our focus is to provide  
16 assistance on damages that were caused by the  
17 disaster. So we have all these inserts  
18 written based upon our eligibility  
19 determination not on our ineligibility for  
20 other reason type information.

21 I don't know if I'm making myself  
22 clear, but through the law and through the

1 regulations, that sets forth on what we can  
2 pay and what we can determine as habitable  
3 eligible items. So our letters are written  
4 based upon what our regulations call for which  
5 is is it disaster-related damage. IID, as  
6 mentioned, is insufficient damage because the  
7 inspector did not find damage that affected  
8 the habitability of which they could be  
9 eligible to receive assistance for.

10 Q. You read the sworn declarations of  
11 the Plaintiffs in this case that were  
12 submitted in the case, right, where they swear  
13 that they were sitting in their house when the  
14 storm blew through and caused damage to their  
15 homes?

16 A. Yes.

17 Q. Right? And they provided  
18 pictures?

19 A. Yes.

20 Q. I mean aren't there disaster  
21 survivors all over the country that are in the  
22 same boat and wondering, "Why is it that I saw

1 the damages caused by the storm, why is it  
2 that FEMA is not paying me?" Don't you think  
3 that there are people all around like the  
4 disaster survivors that really want to know,  
5 "Why is it that I'm getting repair money or  
6 I'm not getting repair money"?

7 MS. WELLS: Object to the form of  
8 the question.

9 THE WITNESS: It's also very clear  
10 in the information that is sent to the  
11 applicant after they register for FEMA  
12 assistance in terms of what FEMA would  
13 consider eligible damage. And that's in the  
14 Help After the Disaster Guide. And it talks  
15 about what's eligible, what isn't eligible.  
16 And it makes reference throughout the document  
17 that it has to be disaster-related damage.  
18 And that is what the inspector's purpose is is  
19 to determine what is disaster related and what  
20 is not disaster related.

21 BY MR. WESEVICH:

22 Q. And FEMA's position is that the

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1 explanation for the decision that is provided  
2 in that letter is sufficient to inform people  
3 of the basis for FEMA's actions.

4 A. I think it's sufficient to  
5 indicate that there was insufficient damage by  
6 the event to indicate that they were not  
7 eligible and had not affected the safety of  
8 their home to be lived in. It also goes on to  
9 talk about if they file an appeal what they  
10 need to do for their appeal to be considered.

11 For instance, in this particular  
12 letter where it talks about insufficient  
13 damage, it also indicates that "Please send us  
14 documents such as statements from local  
15 officials, contractor estimates" -- so it does  
16 not say licensed contractor, et cetera, -- "to  
17 show that damage to your home was caused by  
18 the disaster and has caused unsafe or  
19 unlivable conditions."

20 So, again, it's a two-pronged  
21 determination. It's a determination of  
22 damages and unsafe conditions or habitability



1 conditions. It goes hand-in-glove with one  
2 another. In other words, you can have damages  
3 that doesn't affect your habitability and it  
4 could still be insufficient damage.

5 Q. Sure. If you have a statue  
6 outside right next to your house and the storm  
7 blows it over, that doesn't affect the  
8 habitability of the home. Right?

9 A. Correct.

10 Q. So FEMA would never pay for that  
11 --

12 A. It depends.

13 Q. -- no matter how much damage the  
14 storm did to the --

15 A. No. If it affected ingress and  
16 egress of the home such that it would make it  
17 difficult to gain access to the home, FEMA  
18 could pay for that debris removal, to clear  
19 that and make the home accessible, make the  
20 home, allow for ingress and egress.

21 Q. Okay. But you would agree that  
22 people need to know the reasons for FEMA's

1 decision on repair assistance so that they can  
2 make intelligent decisions about whether and  
3 how to appeal.

4 A. It's clear as to how to appeal.

5 Q. Right. But people don't know  
6 whether to appeal unless they know the reason  
7 for the adverse decision against them.

8 A. If we get very specific, we'd  
9 probably have less appeals. This is just  
10 basically saying, "If you don't agree with our  
11 decision, you know, you can appeal. And in  
12 order to appeal, we're going to be asking you  
13 to provide us additional information to  
14 support your appeal."

15 Q. Okay. And the letter that's sent  
16 to applicants, it doesn't tell them that a  
17 licensed contractor is required.

18 A. No. It just says contractor  
19 estimates.

20 Q. And the letter sent to applicants,  
21 it doesn't tell them that a contractor's  
22 estimate or a city's damages estimate is

1 required. It just says that's additional  
2 information that you could submit with your  
3 appeal. Correct?

4 A. It says that that's what we will  
5 be looking for in their appeal as additional  
6 documentation. What that would be looked at  
7 is depending upon what is received as  
8 additional supporting documentation. If those  
9 elements that are identified in the appeal  
10 were not addressed in the initial inspection,  
11 a new inspector would be sent out with  
12 specific instructions to, "Look at this entire  
13 structure. Record all damages but pay  
14 attention to X, Y & Z as these were identified  
15 in the appeal itself as not being addressed."

16 Q. But as I understand the appeal  
17 procedures that are in the documents, if  
18 somebody does not send in a contractor  
19 estimate, their appeal would be denied?

20 A. Not just an estimate. If they  
21 have not submitted any additional supporting  
22 documentation or evidence that something was

1 overlooked in the initial inspection, then it  
2 would be denied because there's nothing for  
3 FEMA to render a different decision on based  
4 upon someone simply saying, "I didn't get  
5 enough money." There's nothing for FEMA to  
6 weigh that against.

7 Q. But what about the applicant's  
8 letter saying these damages existed only as a  
9 result of the disaster? What if that letter  
10 is inconsistent with what the inspector says?  
11 The inspector says, "In my judgment, it was  
12 deferred maintenance."

13 A. And if the applicant says, "The  
14 inspector didn't address my foundation because  
15 I didn't get any money for it and I know it  
16 suffered damages," if the person at the NPSC  
17 reviewing the case goes in and looks up in the  
18 information provided by the inspector and sees  
19 that the basement was addressed, well, this  
20 person has provided us no additional  
21 information to overturn our decision because  
22 the inspector went in and verified that that

1 damage may not have been disaster related.

2 You see my point? The applicant  
3 says that they can just appeal, but tell us  
4 why and show some supporting documentation for  
5 us to review so that we can make a  
6 determination as to whether or not we overturn  
7 it or do we simply have to send it out, was it  
8 not addressed and we have to send out a new  
9 inspector to do another inspection.

10 Q. Well, the concern is, and this is  
11 what I'm trying to get at, is whether the  
12 documentation that you require, a contractor's  
13 estimate, is too difficult for poor people to  
14 be able to get, as a practical matter. Does  
15 FEMA know anything about the access that poor  
16 people are going to have to getting contractor  
17 estimates?

18 A. No, but they could also go to  
19 local officials. Local officials can refer  
20 them to contractor estimates. It doesn't  
21 specify other than a contractor's estimate or  
22 local official statement, something that would

1 be a supporting document for FEMA to review to  
2 make a determination.

3 Q. But if they can't get a  
4 contractor's estimate or a local government to  
5 inspect, they're out of luck. Correct?

6 A. If they cannot provide us  
7 documentation for us to render a different  
8 decision, then we would not change our initial  
9 determination. I can't comment on one's  
10 ability or access to something that may or may  
11 not exist. I don't know how to answer that.

12 Q. Inspector goes to a house, sees  
13 that the roof is old, and in the inspector's  
14 judgment the roof is a deferred maintenance  
15 roof and is not going to pay for any of that.  
16 So from your testimony, my understanding is  
17 all the inspector would write down is  
18 "Deferred Maintenance, General," or may add a  
19 comment that "This was the roof" on there, and  
20 that's all the information that FEMA has.

21 A. No, that's not all the information  
22 FEMA has.

1           Q.       What other information does it  
2       have?

3           A.       A habitability call.

4           Q.       Anything else?

5           A.       Yeah. All the other information  
6       that the inspector collects out in the field.  
7       They validate and verify their name, address,  
8       Social Security, their insurance, potential  
9       insurance coverage, members of the household.  
10      That's the standard stuff that we talked about  
11      earlier this morning that the inspector has to  
12      go out and asks very specific questions to  
13      validate the information that the individual  
14      provided.

15                   During the inspection, the  
16      inspector is going to go out and record  
17      whatever damages he or she sees at the time,  
18      whether it's deferred maintenance, preexisting  
19      condition or disaster related. And then after  
20      that inspection is done, the last thing that  
21      the inspection does is make a habitability  
22      call. So it's not one piece of information at

1 a time. They're combined with other pieces of  
2 information.

3 Q. But the only information that's  
4 recorded, if the judgment of that inspector  
5 was this is a deferred maintenance roof, the  
6 only information about the roof that is  
7 recorded is a check mark on "Deferred  
8 Maintenance" that says, and at most a comment  
9 that says "Roof."

10 MS. WELLS: Object to the form.

11 BY MR. WESEVICH:

12 Q. Right? There's no other  
13 information about what the basis of the  
14 deferred maintenance was.

15 A. Through deductive reasoning, it  
16 would also mean that there was no  
17 disaster-related damage as a result of having  
18 a deferred maintenance roof.

19 Q. Okay. In that situation let's say  
20 -- and the inspector in this hypothetical, the  
21 only basis for the judgment is he looked at  
22 the roof and it looked very old and that's why



1 the inspector said deferred maintenance. What  
2 if the owner had a receipt for having just put  
3 in the roof two years ago? How would the  
4 owner know to send in that receipt to FEMA?  
5 It's documentation. It's not anything that  
6 has to do with a contractor estimate or a city  
7 review of it. What is it in that letter  
8 you're looking at at 2956 that would tell the  
9 applicant, "I should send in this receipt that  
10 says I just got this roof put on"?

11 A. What you haven't articulated is  
12 whether or not there was any damage as a  
13 result of that deferred maintenance roof.  
14 Your scenario is that the inspector goes out  
15 and sees an old roof and denies the person  
16 assistance. Does the person have any physical  
17 damage outside of the fact that it's an old  
18 roof. Has the person suffered any damages as  
19 a result of the disaster.

20 Q. If the person is saying that "My  
21 roof leaks, my roof leaks" --

22 A. There will be evidence of that.

1       There will be evidence of that. And the  
2       inspector is to go in and look at each of the  
3       rooms and record damages in each room. So if  
4       there is damages as a result of that and the  
5       person says, "My roof leaks, there is the leak  
6       marks there," the inspector is going to make a  
7       determination as to whether or not that was a  
8       preexisting condition or does it look as  
9       though it's fresh and it's something that may  
10      have been a result of the disaster. That  
11      damage may be recorded or it may just be  
12      recorded that he also observed that it's a  
13      very old roof that is in ill repair. So he's  
14      going to make that call.

15               Now, after he goes into each room  
16      and if he records no damage, he's going to  
17      record no damage. But then at the end, he  
18      will make a determination as to whether or not  
19      the home is habitable. And that's the last  
20      thing that the inspector does.

21               So it's a combination of what he  
22      or she views as damage, an interpretation as

1 to whether or not it was disaster related and  
2 a determination as to whether or not the  
3 people can live in their home based upon the  
4 habitability criteria. So I can't answer  
5 without giving the whole picture, because it's  
6 several things that take place at the same  
7 time.

8 If an inspector goes out and  
9 simply looks at a roof and says, "That's an  
10 old roof," marks "Deferred Maintenance" and  
11 walks away, that's a bad inspection.

12 Q. But you'd agree that all the  
13 applicant sees is the inspector comes in and  
14 looks around at the house, and then next  
15 thing, the applicant gets that letter that  
16 begins on 2956.

17 A. Yes. And it says here that the  
18 FEMA decision was you are ineligible because  
19 of insufficient damage. If I don't agree with  
20 that, I'm going to write FEMA a letter saying  
21 that I don't agree with it and here is why.  
22 And, again, you need to, if you do not agree,

1 write an appeal. An appeal says that you must  
2 explain what it is you are appealing and then  
3 provide additional documentation to support  
4 what you are saying.

5 Q. If an applicant sends in a  
6 contractor estimate, what happens then?

7 A. The estimate is reviewed by the  
8 appeals folks, staff. And what they do is  
9 they review the entire case and look at what  
10 is the person appealing to see whether or not  
11 it was addressed in the inspector's report.  
12 If it wasn't addressed, most often it would be  
13 sent out for a reinspection.

14 Q. And if it was addressed?

15 A. If it was addressed and if it was  
16 addressed as deferred maintenance, it would  
17 come back to say that "We uphold our original  
18 decision that you have insufficient damage."

19 Q. Even though there was a contractor  
20 estimate sent in?

21 A. Did the contractor estimate  
22 indicate that it was something other than

1 deferred maintenance? Again, if the  
2 contractor's inspector just comes in and says  
3 the person received damage to their roof,  
4 okay, they can go in, the inspector's palm pad  
5 would indicate or the inspector's report would  
6 indicate what was deferred maintenance, what  
7 was preexisting, damages that existed interior  
8 to the rooms or if no damages were recorded.

9 And then if a contractor sends in  
10 saying that "Damages occurred as a result of  
11 the disaster and here's my estimate," if it  
12 was not covered in the initial inspection, a  
13 new inspector would go out and inspect the  
14 roof. Even if it was identified as deferred  
15 maintenance, there's a good chance that if the  
16 cost estimate from a contractor indicates that  
17 it was disaster related, most likely they  
18 would send out another inspector because it  
19 contradicts what was in the initial  
20 inspector's report.

21 Q. What if the contractor providing  
22 the estimate says, "I don't know. I don't

1 know whether this was disaster related or  
2 preexisting," then what does the appeals  
3 officer do with that estimate?

4 MS. WELLS: Object to the form.

5 THE WITNESS: They would also  
6 determine whether or not the issue that was  
7 being addressed by the contractor, was it  
8 addressed in the initial inspection. In that  
9 case since we rely upon FEMA inspectors to  
10 provide us all the information on damage that  
11 is verifiable based upon the disaster, it  
12 would be overruled. The contractor's estimate  
13 would be overruled saying it was addressed in  
14 our initial inspection.

15 BY MR. WESEVICH:

16 Q. So if FEMA's inspector said that  
17 the roof was deferred maintenance and a  
18 contractor went and looked at it and said, "I  
19 don't know whether the disaster caused this or  
20 whether it was preexisting," then FEMA's  
21 appeals officer would uphold the original FEMA  
22 inspector decision.

1           A.       If it was addressed in the initial  
2       inspector's report, yes.

3           Q.       When you say addressed, you mean  
4       that -- when you say that the FEMA inspector  
5       addressed that item, you mean that it was  
6       checked off in the areas of Deferred  
7       Maintenance.

8           A.       Yes, or comments were reviewed in  
9       the comments field.

10                  Again, I'd like to just go back to  
11       this letter here where we talk about the  
12       insert that reads as IID, Ineligible,  
13       Insufficient Damage. It says, "If you do not  
14       agree with our decision, you have the right to  
15       appeal." If you go to the next page --

16           Q.       That's 2957?

17           A.       Yes. At the very top as a  
18       continuation of that it also says, "Explain in  
19       writing why you disagree with FEMA's decision.  
20       And please send any new or additional  
21       information and documentation that you have  
22       supporting your appeal." So that would be

1 anything that would be an official document,  
2 official statements. But they also have to  
3 identify what it is that they are appealing.

4 So if in fact they're saying that  
5 "My roof leaks" and they provide us a document  
6 from a contractor to say that the roof  
7 continues to leak and it was caused by the  
8 event but it was addressed as deferred  
9 maintenance, chances are we're going to send  
10 another inspector out there to confirm either  
11 what was originally stated as deferred  
12 maintenance or to support whatever that  
13 contractor has provided as estimates.

14 Q. But how would the applicant know  
15 to ask the contractor to make this deferred  
16 maintenance versus disaster related  
17 distinction?

18 A. They're most likely not going to  
19 know that. But they do know that they don't  
20 agree with FEMA's decision.

21 Q. Describe what the team leader of  
22 the appeals section does. Does that person



1 review every decision by an appeals officer  
2 before it's finalized? Or describe what role  
3 that person has.

4 A. The team itself?

5 Q. The team leader.

6 A. The team leader or supervisor?

7 Q. Yes, sir.

8 A. Typically that would be overseeing  
9 and answering any questions that may come up  
10 regarding any appeal that comes in, assisting  
11 the staff and reviewing their case, clarifying  
12 any questions that may arise. And typically  
13 the caseworker would review the case, render a  
14 decision, coordinate it with the supervisor.  
15 I'm not 100 percent sure if the supervisor  
16 signs off on every single appeal, but it's  
17 usually worked out because appeals are tricky.

18 You know, appeals are looking at  
19 all documentation, trying to determine what  
20 the individual is actually appealing, looking  
21 at the inspection material, all of the  
22 comments. So it's a constant exchange of, you

1 know, "I have a question here. Can you look  
2 at this? Can you verify that? Is this  
3 sufficient?" It's a constant exchange.

4 Q. Does somebody have to approve each  
5 appeal decision besides the person who  
6 recommends that decision? In other words, are  
7 there two people who review each appeal  
8 decision before it's finalized?

9 A. That I'm not 100 percent sure of.  
10 I don't know if -- the appeals person is  
11 someone else. If it was manually reviewed  
12 before isn't the same person. It's different  
13 people that review it. I do believe it is a  
14 two-step process, but I would have to verify  
15 that. I know that we've been streamlining  
16 that throughout the years. So I don't know  
17 what it currently is, if it's two or more  
18 people that actually go through the approval  
19 process for it.

20 Q. If a judgment of deferred  
21 maintenance is made by the initial inspector,  
22 the only way that that judgment can be

1 overturned is if there is an appeal inspection  
2 ordered by the appeals officer. Is that  
3 accurate?

4 A. There's no -- I mean the judgment  
5 takes place in the field. The call, the  
6 eligibility call takes place at the processing  
7 center. So the call wouldn't be deferred  
8 maintenance. The call would be IID or  
9 insufficient damage.

10 Q. Ineligible for insufficient  
11 damage.

12 A. Ineligible for insufficient  
13 damage. That is the eligibility  
14 determination. Now, what would feed into that  
15 determination is the inspection report. And  
16 if the inspection report only indicated that  
17 there was deferred maintenance, then the  
18 person would have to appeal and provide  
19 additional documentation to support what they  
20 are appealing, and then a determination would  
21 be made to send out another inspector.

22 Q. But the only way that a deferred

1 maintenance determination by the inspector  
2 could be overturned is if a second inspection  
3 is ordered.

4 A. Not all the time. And, again, if  
5 the inspector sees on the roof that the roof  
6 is deferred maintenance but there was actual  
7 damage to the roof and estimates that there's  
8 20 square feet of shingles that need to be  
9 replaced or repaired on the roof and a  
10 contractor submits an estimate saying that  
11 there is 35 square feet of shingles that need  
12 to be replaced, they may not send out an  
13 inspector. They may just simply grant the  
14 additional 15 square feet of shingles. So  
15 it's not 100 percent one way or the other.  
16 It's a call determined based upon what they're  
17 appealing and how they're appealing and what  
18 documentation they provided to appeal.

19 If I can add another example of  
20 that. Most often when there's basements  
21 involved and utilities, furnace, hot water  
22 heater is damaged but the inspector can't

1 determine how severely it's damaged, the  
2 inspector is going to provide a  
3 clean-and-sanitize or a clean-and-test for  
4 that utility. Then the person is going to  
5 call in a contractor and say, "I got money  
6 from FEMA. I need to have this cleaned and  
7 repaired." And that person then says, "Well,  
8 this is damaged a lot more once I got into it.  
9 It's really damaged." They can submit an  
10 appeal with an estimate and FEMA could award  
11 on that appeal.

12 It's the same type of premise. We  
13 may not have to send an inspector out to  
14 verify on something that was already addressed  
15 but not addressed fully.

16 Q. And when you say addressed but not  
17 addressed fully, you mean by the initial  
18 inspector.

19 A. That is correct.

20 Q. Are appeals ever auto-determined?

21 A. No.

22 Q. I show you Pages 5006 and 5007.

1 A. Yes.

2 Q. Have you had a chance to review  
3 those?

4 A. Yes, I have.

5 Q. In your Code of Federal  
6 Regulations right there, this book --

7 A. Yes.

8 Q. -- could you look at 206.111.

9 A. Yes.

10 Q. 206.111 has a bunch of  
11 definitions. Correct?

12 A. Yes.

13 Q. One of those definitions is  
14 "safe"?

15 A. Correct.

16 Q. Okay. The definition of "safe"  
17 that appears in 206.111 is less specific than  
18 the definition of "safe" that appears on Pages  
19 5006 and 5007. Correct?

20 MS. WELLS: Object to the form.

21 THE WITNESS: I'm not sure if I  
22 would categorize it as less specific. It's

1 different in the sense that in the Code of  
2 Federal Regulations which is based upon FEMA's  
3 authority to provide assistance for  
4 disaster-related damages, "safe" is defined as  
5 means secured from disaster-related hazards or  
6 threats to occupants.

7 You now need to take what that is  
8 saying and how is that to be viewed when you  
9 go out and look at a structure. And so this  
10 sets the parameter for what this is  
11 articulating -- when I say "this," it's Page  
12 5006 -- for habitability characteristics in  
13 terms of what does this particular "safe" mean  
14 to an inspector in the field.

15 BY MR. WESEVICH:

16 Q. As I understand what you are  
17 saying, what's written on Pages 5006 and 5007  
18 is consistent with what is in the Code of  
19 Federal Regulations. It's just more useful in  
20 applying it when you go out in the field to  
21 inspect a home. Is that correct?

22 A. That is correct. That's correct.

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1           Q.       Now, when judging whether  
2       disaster-related damages has caused a safety  
3       hazard, does FEMA have any standards for how  
4       immediate the safety hazard has to be, how  
5       likelihood, the likelihood of there being a  
6       danger or how severe the danger is going to be  
7       to someone? In other words, beyond what's  
8       written here on Pages 5006 and 5007, does FEMA  
9       have any other standards for saying what is  
10      safe, what repairs are necessary to make a  
11      home safe?

12           A.       There is additional information  
13      when it comes to imminent danger that would  
14      affect the habitability, not specifically to  
15      items as it relates to safety. And I say that  
16      because there is, for instance, imminent  
17      danger where the house may not have suffered  
18      any damage but is on the side of a cliff that  
19      is eroding. That places a house in imminent  
20      danger which would affect the habitability of  
21      the home which could also mean the home isn't  
22      safe in its certain condition, in its current



1 location that close to the cliff.

2 Q. Now, both the statute, the  
3 Stafford Act and the regulations refer to  
4 these terms, "safe, sanitary and functional."  
5 Correct?

6 A. Correct.

7 Q. Does FEMA tell contractors to  
8 distinguish safe from sanitary from functional  
9 or do they all basically meld into one  
10 concept?

11 A. No.

12 Q. There --

13 A. Go ahead. I'm sorry.

14 Q. The question is do you tell  
15 contractors how to distinguish among safe,  
16 sanitary and functional?

17 A. It has to do with the line items  
18 associated with the Inspection Services. In  
19 other words, it all is a function of  
20 habitability. So if there are unsafe  
21 conditions -- and there are examples, I  
22 believe, that are described in some of the

1 training materials. It also describes what  
2 functional is. "Safe" is described as it is  
3 here and as you have described on a previous  
4 page on the screen, what to look at when  
5 looking at safety items.

6 Q. Okay. We're looking at 4290 here.  
7 Do you recognize what that document is?

8 A. Yes, I do.

9 Q. Would you describe it?

10 A. It's an ineligibility report  
11 produced from the NEMIS system on all the  
12 different categories of why an applicant is  
13 ineligible.

14 Q. And are those produced real time  
15 for FEMA Headquarters in each disaster?

16 A. It will vary but yes, we can call  
17 up the NPSC and have them pull a report at any  
18 time and they can produce a report like this.

19 Q. Do they send those reports to you  
20 daily during the first days of any major  
21 disaster?

22 A. Not in Headquarters. It's

1 something that is typically monitored in the  
2 joint field office by the Individual  
3 Assistance staff at the joint field office.  
4 And it's typically not going to come about  
5 immediately following the disaster. It will  
6 come about when requested by the staff, and  
7 then the staff would request however often  
8 they want the reports sent to them.

9 Q. When you say staff will request a  
10 report, are you talking about field staff or  
11 are you talking about NPSC staff?

12 A. Field staff. Field staff in terms  
13 of the Individual Assistance staff that's in  
14 the field. Most often the NPSC will also send  
15 out a NPSC liaison to support the Individual  
16 Assistance staff in the field who can also  
17 monitor a lot of this activity that's going on  
18 at the processing center.

19 Q. Now, this is the ineligible  
20 housing assistance report. Is this part of a  
21 larger document that would include a report  
22 concerning the eligible housing assistance?

1           A.       There are numerous, numerous  
2       reports that can be pulled. And it depends on  
3       what information you are seeking. But it can  
4       be part of a larger report or it could be a  
5       stand-alone report. It depends on what  
6       information you are requesting NPSC to pull.

7           Q.       But what information is pulled and  
8       reported from the field to the NPSC and then  
9       from the NPSC to Headquarters regarding a  
10      disaster?

11          A.       They will look at eligibility  
12      rates. They will look at dollar amounts  
13      disbursed. They will look at how many  
14      applications had been received, how many are  
15      eligible, how many are ineligible. But again,  
16      there could be a category of ineligible. And  
17      then if there is high numbers, we would want  
18      to look at a breakdown, which is what this  
19      report is is a breakdown of those ineligible  
20      applicants. It can vary depending upon who is  
21      seeking what information.

22                   We could also get information and

1 reports on the Inspection Services, how well  
2 are they receiving work and sending work back  
3 to the NPSC, what is the time frame it's  
4 taking them, average turn-around from an  
5 applicant. There's just hundreds of ways you  
6 can ask for information and receive it.

7 Q. And my question is specifically on  
8 Disaster 1780. What was the ongoing  
9 monitoring that was conducted by the NPSC in  
10 the field and by Headquarters of NPSC in the  
11 field?

12 A. I couldn't be sure. I mean it's  
13 standard that there is constant monitoring.  
14 Prior to coming to Headquarters, I spent 15  
15 years doing disaster work, probably have over  
16 50 disasters that I've worked on. Most of  
17 those disasters, I was a Human Services Branch  
18 Chief. I would ask for these reports on an  
19 ongoing basis just to get a feel for where we  
20 stand within that disaster.

21 So this gives me a good indication  
22 as to how many inspections, not this report

1 but any series of reports that I would  
2 request, depending upon the information I am  
3 seeking, how far along are we on this  
4 disaster, how many inspections have been  
5 issued, how many are pending, what's the  
6 estimate of which we initially set for how  
7 many inspections we would anticipate to know  
8 whether or not X percentage through this  
9 disaster.

10 I would also look at the dollar  
11 amounts, the eligibility rates. It's a  
12 constant ongoing. It's never something that  
13 is potentially set 100 percent of the time  
14 with the exception of some of this data would  
15 appear in the daily situational report. The  
16 daily situational report is at the request of  
17 the FCO. And that gets shared with  
18 Headquarters, but it doesn't typically get  
19 into this type of detail. It may have an  
20 overall, what we would refer to as dashboard  
21 or synopsis of the disaster, how many  
22 registrations we have, how many are eligible,

1       how many ineligible, what's the dollar amount,  
2       how many inspectors are in the field, how many  
3       inspections have been completed, how many are  
4       pending.

5                   Information like that which is  
6       overall information could appear in this daily  
7       situational report. As time goes on and the  
8       disaster starts to slow down, become more  
9       routine, the situational report may become  
10      every other day, every third day, once a week,  
11      once every two weeks, depending upon the  
12      activity in the field.

13           Q.       When you mentioned FCO, by that  
14      you mean Federal Contracting Officer?

15           A.       Federal Coordinating Officer. I'm  
16      sorry. Yes.

17           Q.       As Human Services coordinator,  
18      where were you located?

19           A.       I was based out of Boston in FEMA  
20      Region 1, but I worked disasters all over the  
21      country.

22           Q.       So as I understand, the monitoring

1 of the disaster response is done from the  
2 regions?

3 A. It happens at different levels. I  
4 do know when a disaster is ongoing at the  
5 NPSC, they have continual monitoring of the  
6 disaster because they are actually doing the  
7 processing. These are all processing reports.  
8 So that is done on a, you know, all-the-time  
9 basis.

10 For me in the field, I may not  
11 need this information initially and I may  
12 request it two weeks into the disaster so that  
13 I can -- you know, once I'm able to sit and  
14 digest all the information that's coming in, I  
15 may want to see, "Okay, where are we in this  
16 disaster? I can see that the eligibility rate  
17 is only 67 percent. Why are people  
18 ineligible?" I would ask for this report  
19 which would give me a complete breakdown of  
20 why people are ineligible.

21 Q. Is it your experience that the  
22 applications start off slow, they ramp up very



1 high, and then they level off, and then they  
2 drop precipitously? Is that generally the way  
3 that disasters go?

4 A. Generally. Generally. People  
5 will apply within the first several days of  
6 the disaster. The Inspection Services is  
7 ramped up real quickly so that they could  
8 literally be out in a matter of 24, 48 hours,  
9 be in the field, start receiving work. And  
10 then we start monitoring, you know, how fast  
11 is that work being sent back and completed to  
12 the NPSC. So it does generally look like a  
13 bell curve. And it's usually up front where  
14 it peaks rather quickly and then it trails  
15 off.

16 Q. And then there's a three-day turn  
17 around requirement on inspections. Correct?

18 A. For the overall task order, yes.

19 Q. So the inspections, most of them  
20 are done within the first two or three weeks  
21 after the disaster.

22 A. Depending upon the size of the

1 disaster. But for other than very large  
2 events, they're usually pretty much on target.  
3 And what I mention is it's for the entire task  
4 order that they have an average turn around  
5 time of three days. That's something that,  
6 quite honestly, a Federal Coordinating Officer  
7 is interested in because they want to make  
8 sure that assistance is going out in a timely  
9 manner. So they will start asking the Human  
10 Services Branch Chief or the Individual  
11 Assistance Branch Chief, "How are the  
12 inspectors doing?" And we can pull those  
13 reports to see what the average turn around  
14 times are. We can monitor that.

15 If it is a very widespread  
16 disaster where people are scattered throughout  
17 the area, they may be more than initially  
18 three-day turn around, because people have to  
19 make contact with the individual, meet the  
20 individual and look at their damage. But if  
21 it's a concentrated area where they can do  
22 multiple inspections one right after another

1 and get in contact with the individual and  
2 meet them, you know, the average might be less  
3 than three days. But they look for that  
4 three-day average for the entire task order.

5 Q. Do you know what efforts were made  
6 to find all these general reporting documents  
7 for 1780? Because we have these ineligible  
8 reports but we don't have any reports saying  
9 that these are the dollar amounts that were  
10 recorded or any reports that were made from  
11 the FCO to Headquarters or anything like that.

12 So my question is do you know what  
13 efforts were made to find the statistical  
14 reports that were shared within FEMA on this  
15 particular disaster?

16 A. No, I don't. But I do know as  
17 mentioned, having produced many situational  
18 reports, we typically will report out concerns  
19 for the disaster, where we are in the  
20 disaster. And we'd always report out, and it  
21 may not be in a report form like this but we  
22 report out eligibility rate. We would report

1 out the dollar amounts that have been  
2 disbursed and the amount of registrations  
3 we've received. That is also typically  
4 articulated and explained in the daily  
5 briefings that the FCOs have. And I say it  
6 starts out daily and then it may go twice a  
7 week, three times a week, and that will trail  
8 off as the disaster goes on.

9 Q. Because FEMA doesn't just give the  
10 task order to PaRR and say, "Bring us back  
11 these inspections and then we'll process  
12 them." It's watching the data that is  
13 building with respect to applications and how  
14 they're being processed all the time in each  
15 disaster and it's doing that real time.  
16 Correct?

17 A. That is correct.

18 Q. How is it that FEMA shares  
19 information with various components at NPSC,  
20 at Headquarters, on the field? Is it done by  
21 e-mail? Is it done by -- do you have carrier  
22 pigeons? Do you have the mail service? How

1 is it that that information is shared?

2 A. Typically, there's reports  
3 officers in the joint field office. And  
4 typically, I would have a reports officer  
5 assigned to Human Services in Individual  
6 Assistance. And we could ask for what's known  
7 as the WEBI reports. It's W-E-B-I. I can't  
8 remember exactly what that is. It's a WEBI  
9 report and you can ask through the WEBI  
10 report. They have canned reports and ad hoc  
11 reports, but they're standard reports that are  
12 produced through WEBI. And it will give all  
13 the data statistics of that disaster.

14 So I could go to my reports  
15 officer and say, "Can you pull me the  
16 ineligibility report," or "Could you pull me  
17 the disbursement report? Can you pull me the  
18 Inspection Services report," the owner report,  
19 the housing report. I mean there's numerous,  
20 just volumes of reporting that we do.

21 Q. Would you go to that person's  
22 office and ask them orally or would you send

1       them an e-mail saying, "I need this report?"

2           A.       Typically, it would be done  
3 orally.

4           Q.       Are all the reports that have been  
5 requested and provided saved in a particular  
6 file?

7           A.       It's all within NEMIS. So you can  
8 still pull reports from NEMIS for the  
9 disaster.

10          Q.       But how can you tell what reports  
11 were pulled by whom and when while the  
12 disaster was going on?

13          A.       It can be pulled from -- any  
14 number of requests can be made to pull a  
15 report. So it would be very difficult to say  
16 what report was pulled for what reason by  
17 someone's request for that information.

18          Q.       And where are the requests  
19 recorded?

20          A.       The requests could be orally, but  
21 the reports are generated through WEBI. I  
22 don't know if WEBI actually tracks how many

1 different reports. It's a database. You can  
2 just simply go in and pull the information  
3 from the database. I don't know if it says,  
4 "Okay, on this day, at this time, you pulled  
5 this information."

6 A lot of times what we do to meet  
7 the sit. rep. report, situational report, is  
8 we will set a time at 5:00 o'clock every  
9 night. If the report is generated for 7:00  
10 o'clock in the morning, it means it has to be  
11 written at night. So we want to cut off every  
12 day at 4:00 o'clock, provide the reports folks  
13 a report that they will then put into the  
14 situational report.

15 So it could be set up once to say,  
16 "Give us this until otherwise noted," or I can  
17 go to my reports person at any time and say,  
18 "I need a report today, right now on  
19 Inspection Services. I have to go meet with  
20 the Federal Coordinating Officer. He has  
21 questions on them." And I can pull it right  
22 there, have someone pull the report.

1                   And that can be pulled from the  
2                   Federal Coordinating Officer. It can be  
3                   pulled from NPSC Headquarters. I'm sure it's  
4                   pulled all the time at the NPSC. It can be  
5                   pulled from External Affairs, Congressional  
6                   Affairs. The request can come from any number  
7                   of sources.

8                   Q.       But the type of real time  
9                   monitoring and the questions that were asked  
10                  at FEMA Headquarters and at NPSC about 1780,  
11                  I'm asking what records are made of that real  
12                  time monitoring process besides -- I hear the  
13                  WEBI is one potential source of that  
14                  information. What are the other potential  
15                  sources of that information?

16                  A.       NEMIS. I mean NEMIS is the  
17                  official records keeper for the Agency. So  
18                  all the data is kept in there, and you can  
19                  access the reports through WEBI.

20                  Q.       That's going to tell us the  
21                  information but it's not going to tell us what  
22                  real time monitoring was done by FEMA



1       Headquarters.

2               A.       That's right, because it just  
3 happens all the time. And as I mentioned,  
4 where processing takes place, they have more  
5 monitoring taking place on an ongoing basis  
6 than, say, the disaster field office or  
7 Headquarters. So, again, they're looking at  
8 queue monitoring. They're looking at any  
9 backups in the system. So they're monitoring  
10 activity level in NEMIS for any particular  
11 disaster on a daily basis. But that may not  
12 be generating a report. It's managing the  
13 system. So it's constant.

14              Q.       You see in this Page 4290 that  
15 there were 14,900 insufficient damage denials  
16 as of September the 3rd, 2008.

17              A.       Yes.

18              Q.       And if I told you that there were  
19 33,900 total applications and that this was  
20 roughly about, what, that's about 45 percent,  
21 something like that, of just the insufficient  
22 damage denials, would that strike you as a

1 high number?

2 A. It's situational.

3 Q. You mean disaster specific when  
4 you say situational?

5 A. Yeah. It could be something that,  
6 you know, it's situational based upon the type  
7 of event, the severity of the damages, the --  
8 I mean we get very high spikes of  
9 ineligibility in different parts of the  
10 country for various reasons. But, again, it's  
11 going to be based upon the inspector going out  
12 and validating that damage.

13 Q. When you get those spikes, do you  
14 at FEMA Headquarters try to understand the  
15 reason behind those spikes at the time of the  
16 disaster?

17 A. If it's elevated to Headquarters,  
18 it's something that's typically going to be  
19 brought up in the disaster field office of  
20 which they have their Human Services staff  
21 there who would monitor and try to find out  
22 what's the situation. At least that's what I

1 did when I was a Human Services Branch Chief.

2 Q. But if the field sees a spike, is  
3 an attempt made by someone at FEMA, whether  
4 it's Headquarters or NPSC, to understand the  
5 reason behind it?

6 A. Yes, typically.

7 Q. And would this be considered a  
8 spike, 14,900 of 33,000-some total  
9 applications?

10 A. I would consider it to be raising  
11 an issue that I would want to know more about.

12 Q. And would you expect Headquarters  
13 and NPSC to have looked into this?

14 A. I would expect the field office to  
15 have looked into it and get a better  
16 understanding as to what is driving this  
17 ineligibility for insufficient damage.

18 Q. And what reports would you expect  
19 them to generate?

20 A. They may not generate a report,  
21 but they would look into it and try to find  
22 out what is the situation surrounding a high

1 percentage of insufficient damage. So it  
2 could be a coordination back to the NPSC which  
3 could be verbal to say, "We're seeing a lot of  
4 insufficient damage due to..." X, Y & Z  
5 reasons. And it may be good enough or they  
6 may want to say, "Can you look into that."

7 And as you can see, there are any  
8 number, there are several different reasons  
9 why people are ineligible there. So in any  
10 one of those, they may want to look into any  
11 number of those reasons as to why this number  
12 is this; you know, "Can you give me more  
13 information? What are you finding? What are  
14 the inspectors finding?" Because the IID is  
15 an insufficient damage call. It's an  
16 inspector call.

17 So they may want to reach back out  
18 to find out what is the inspector finding out  
19 there? Why do we have such a high percentage  
20 rate? That is a typical reaction if I were to  
21 review this report and I were in the field.  
22 Again, there are many different people out

1       there who would do things differently. My  
2       experience, when I see high numbers, I want to  
3       know a little more. I would call the NPSC and  
4       I would ask them, "Can you look into this?"

5               Q.       But my question is what was done  
6       in 1780 to look into it?

7               A.       I don't know. It could have been  
8       verbal.

9               Q.       Have you tried to find out?

10              A.       I was aware that there were a lot  
11       of insufficient damage but I wasn't aware at  
12       the time of 1780. This was done in 2008. I'm  
13       not 100 percent sure if I was aware or not.  
14       But, again, this is something that is  
15       monitored in the field.

16              Q.       Right, but you haven't looked into  
17       it to prepare for this deposition to look into  
18       whether anything was done to learn the reason  
19       behind that number.

20              A.       No, because I'm aware that there  
21       was an awful lot of deferred maintenance and  
22       preexisting condition that resulted in an

1       insufficient call.

2               Q.       How are you aware of that?

3               A.       From reading the material and when  
4       I was first questioned about what's my  
5       knowledge of this back in 2010, 2011,  
6       somewhere in that time frame.

7               Q.       Now, the first bullet point that's  
8       written on this report says "Most of  
9       ineligible HA cases are IID decisions that  
10      consist of deferred maintenance, and damages  
11      that do not affect habitability are the top  
12      reasons." What information in NEMIS would you  
13      look at to distinguish how many of the 14,900  
14      were deferred maintenance and how many of them  
15      were habitability?

16              A.       It comes from the Inspection  
17      Services report and what they capture as  
18      damage. And if they indicate that it's  
19      deferred maintenance, that is the call that  
20      the inspector makes. Habitability is  
21      determined based upon the FEMA decision and  
22      its processing system.

1                   So, again, it's by the inspector  
2                   who says it's habitable, the overall condition  
3                   of the home is habitable or not inhabitable,  
4                   uninhabitable. And whether or not it's going  
5                   to be processed for any assistance is  
6                   determined, the actual eligibility is  
7                   determined by the system. So I don't know if  
8                   I explained that clear enough. But also  
9                   clearly for someone to come up with a report  
10                  with those bullets underneath, they did some  
11                  analysis to determine. So this was monitored.

12                 Q.       And you had said that you can go  
13                  back to NEMIS and it's got all the data in it  
14                  and you can ask it all the questions and  
15                  generate all the reports that you want.

16                 A.       All the different reports.

17                 Q.       So my question is could you go  
18                  back in now and say, "Well, how many of those  
19                  14,900 applications were insufficient damage  
20                  as a result of deferred maintenance and how  
21                  many of them were the result of habitability"?  
22                  Could you go back and find those numbers?

1           A.       It should be there, yes.

2                   (Recessed from 3:14 to 3:29 p.m.)

3           BY MR. WESEVICH:

4           Q.       Back on. Now, three percent of  
5 the inspections in each disaster are supposed  
6 to be checked for quality control. Correct?

7           A.       Correct.

8           Q.       And FEMA's purpose in doing that  
9 is to make sure that inspections are  
10 conforming to FEMA's policy.

11          A.       In the Inspection Services  
12 guidelines, correct.

13          Q.       Because FEMA wants there to be  
14 consistent administration of the IA Program.  
15 Right?

16          A.       That's correct.

17          Q.       You want people who have basically  
18 the same facts to get the same repairman.

19          A.       Yes, that's correct.

20          Q.       No matter who their inspector is.

21          A.       That's correct.

22          Q.       And a FEMA correction is when FEMA



1 orders the contractor to change an inspection  
2 or to take a certain action with respect to  
3 one of its inspectors. Is that accurate?

4 A. It's accurate in terms that FEMA  
5 would notice an error in the report and ask  
6 for it to be corrected. They can also monitor  
7 those errors. They can also monitor the  
8 actual inspectors by inspector number to know  
9 whether or not is it an error that's made by  
10 one inspector or is it something that is  
11 systemic that needs correction. So yes, there  
12 is a process of which FEMA can send back an  
13 inspection for correction.

14 Q. Because not only is FEMA  
15 monitoring the overall statistics for disaster  
16 assistance applications real time, it's also  
17 monitoring each application and how that data  
18 is, the validity of that data according to  
19 FEMA standards.

20 A. Yes. They will do a sampling of  
21 all the inspections. And contractually  
22 they're to review three percent of those QCs.

1       They do quality control inspections on that  
2       minimal three percent. So it's a sampling.

3               Q.       And would you say that F-corrs are  
4       unusual in any disaster?

5               A.       F-corrs?

6               Q.       FEMA corrections.

7               A.       Oh, FEMA corrections.

8               Q.       Are those commonly referred to as  
9       F-corrs?

10              A.       I don't know for sure. I don't  
11       know for sure. That's language that's  
12       typically used through Inspection Services.  
13       So I don't know. It wasn't used when I did  
14       inspections. It's plausible. But yeah, FEMA  
15       corrections are done.

16              Q.       But are they unusual in any  
17       disaster?

18              A.       No, no, they're not unusual.

19              Q.       So if there were 345 FEMA  
20       corrections out of 1,444 QC inspections, that  
21       would be about 25 percent. Correct?

22              A.       Yes.

1 Q. 300 divided by 1,444 --

2 A. Yes.

3 Q. -- is roughly 25 percent.

4 A. Roughly.

5 Q. So what that would say is that in  
6 a quarter of all times that FEMA reviewed what  
7 PaRR did with inspections, that FEMA disagreed  
8 with it. Isn't that what it means?

9 A. It may not be a disagreement. It  
10 may be a correction. And a correction could  
11 be for any number of reasons, you know. And I  
12 couldn't even begin to articulate all the  
13 reasons, but there are several. There's  
14 numerous reasons that would be kicked back as  
15 a correction. And, again, it's usually based  
16 upon the processing established throughout the  
17 system and then the Inspection Services  
18 guidelines.

19 Q. Is a 25 percent correction rate  
20 high?

21 A. I don't know. I haven't compared  
22 it to other disasters.

1           Q.     Is that something that FEMA would  
2     want to know the reason for if they were  
3     issuing that rate of corrections?

4           A.     It's something that Inspection  
5     Services would monitor and Inspection Services  
6     would want to track, because it also affects  
7     the accuracy of the inspections and the  
8     contract itself. So in other words, it's a  
9     performance-based contract and they watch for  
10    error rates and everything else, and that  
11    would affect the contract itself.

12          Q.     And are there target error rates  
13    set in the contract?

14          A.     That I don't know. I don't know.  
15    I have not reviewed a contract in a very long  
16    time.

17          Q.     But when you say Inspection  
18    Services -- you used that term several times  
19    -- I want to be clear about exactly who that  
20    is.

21          A.     Steve Ells at the Virginia NPSC is  
22    the project supervisor, program supervisor

1       overseeing Inspection Services. He's a  
2       manager out there.

3               Q.       He oversees all of the PaRR and PB  
4       contracts?

5               A.       He oversees the contracts for PaRR  
6       and PB, yes.

7               Q.       And so he would be the one to say  
8       whether 25 percent was an unusually high FEMA  
9       correction percentage for QC inspections.

10              A.       He would be my point of contact.  
11       If I asked him to give me some samplings of so  
12       many disasters of what the error rate was, he  
13       would be my point of contact that I would go  
14       to.

15              Q.       And he would be the one to  
16       investigate the reason for, the reasons behind  
17       the need for FEMA corrections?

18              A.       He could be one, yes. He would be  
19       the primary person. But there are several  
20       people that work for him because there is also  
21       task monitors, project monitors, disaster  
22       monitors. So I would know who is the

1       Inspection Services coordinator assigned to  
2       that specific disaster and I may go to that  
3       person for that disaster to say, "Can you look  
4       into this?"

5               Q.       And do you know who the people  
6       were who would have been responsible for  
7       Disaster 1780?

8               A.       No, I don't. I would have to look  
9       that up to find out who was assigned as the  
10       Inspection Services coordinator.

11              Q.       How would you look that up?

12              A.       I would go to Steve Ells. Steve  
13       Ells is the supervisor/manager for Inspection  
14       Services. He would be the one, through other  
15       individuals as well, to assign a particular  
16       disaster to one of the project monitors.

17              Q.       You had mentioned that one of the  
18       things that the FCO, one of the data elements  
19       that the FCO sends to FEMA Headquarters on a  
20       real time basis during a disaster is the  
21       amount of dollars awarded.

22              A.       He sends an entire situational

1 report, commonly referred to as a sit. rep.,  
2 which is a report inclusive of all of the  
3 activities ongoing for that disaster. There  
4 is a section in that report assigned for  
5 Individual Assistance. And that information  
6 is typically reported up from the Individual  
7 Assistance officer, Branch Chief, Branch  
8 Director, whoever is in charge of Individual  
9 Assistance at the JFO. That information is  
10 provided into the situational report, the sit.  
11 Rep.

12 Q. And one of the numbers that's  
13 reported regarding Individual Assistance is  
14 the total number of dollars that had been  
15 awarded in the disaster.

16 A. Typically. Typically, it is.

17 Q. And is it broken down in the  
18 situational report by repair assistance,  
19 rental assistance, replacement assistance?

20 A. It can be. It can be. If the FCO  
21 or if there is people wanting to know how it's  
22 broken down, we can break it down. A lot of

1 times it's, you know, we're ten days into the  
2 disaster. FEMA has issued \$13 million in  
3 assistance for individual assistance.  
4 Sometimes it's just the overarching amounts.  
5 If someone says, "How is that broken down,"  
6 then we can provide that information.

7 Q. Who are the consumers of those  
8 situation reports?

9 A. A lot of times they'll go to the  
10 state. It goes to FEMA Headquarters for  
11 senior management to be aware of the situation  
12 ongoing in the field. It can be provided.  
13 Since the information is produced in the field  
14 office, a lot of times the other sections  
15 within the field office may want to look at  
16 those reports to see what's going on in, for  
17 instance, Public Assistance or Community  
18 Relations or External Affairs. So it's a  
19 broad audience.

20 Q. Would Deborah Ingram be one of the  
21 ones to get those reports or the person in her  
22 position?



1           A.       She would have access to those  
2       reports, yes.

3           Q.       But would she look at them for a  
4       major disaster on a daily basis, do you know?

5           A.       Possibly. The reason why I say  
6       possibly is that we also set up conference  
7       calls on a major disaster on a daily basis for  
8       coordination efforts. And we will ask  
9       questions. We'll coordinate. We coordinate  
10      with the region. So maybe she gets her  
11      information from some other source. But the  
12      information is typically provided in the  
13      situational report, sit. rep. report. Whether  
14      or not she reads it, I couldn't tell you.

15          Q.       Would you look at that document.  
16      We're looking at Page 5948.

17                   Is it clear enough?

18                  MS. WELLS: Can you tell us if  
19      this is the entire document or does it  
20      continue on another page?

21                  MR. WESEVICH: It does continue  
22      on. That's the only other page. If the

1       footnote is a little hard to read, I can...

2                   THE WITNESS: I've read it.

3                   BY MR. WESEVICH:

4           Q.       Do you know what that document is?

5           A.       No, I don't.

6           Q.       Do you know what the form of the  
7 document is?

8           A.       No, I don't. It looks as though  
9 it's a summary sheet of the preliminary damage  
10 assessment information and the declaration  
11 information. But I don't know in what  
12 reference this document was produced.

13          Q.       Is there a preliminary damage  
14 assessment that's done for most disasters?

15          A.       Yes. They are done for the  
16 majority of disasters. Even after if it's a  
17 catastrophic event where it's inevitable that  
18 it's going to be declared, sometimes the  
19 President at his or her discretion -- his  
20 discretion -- will declare the event. But we  
21 always do a damage assessment after the event  
22 so we know the scope and magnitude and the

1 required resources to respond to that  
2 disaster.

3 Most typically, a preliminary  
4 damage assessment is to support the state's  
5 request in requesting a declaration from the  
6 President. So in other words, FEMA regional  
7 offices will coordinate with the state and  
8 deploy teams to get together with the state  
9 personnel and go out and assess damages before  
10 a declaration is granted. That information is  
11 collected, coordinated with the state. And  
12 then the state, based upon that information,  
13 would make a request for the President to  
14 declare an event.

15 Q. The President declares roughly  
16 like a hundred disasters a year. Correct?

17 A. Correct.

18 Q. And maybe ten of those are so big  
19 there's no real question that it's going to be  
20 declared a disaster and it's mostly known in  
21 advance and driven from the Federal Government  
22 as far as the Presidential disaster

1 declaration.

2 A. It's never driven from the Federal  
3 Government. It's always at the request of the  
4 state.

5 Q. Very well. Who prepares the  
6 preliminary damage assessment?

7 A. The preliminary damage assessment  
8 is comprised of a team, typically, of regional  
9 staff, disaster employee reservists, disaster  
10 assistance employees that are called up by the  
11 region to conduct a preliminary damage  
12 assessment. They will usually have a  
13 refresher course of what to look for in those  
14 damages.

15 The state will usually give  
16 indication as to what to look for in that  
17 event. And I call it event because it's not  
18 declared yet. And then typically the state  
19 will indicate where the teams of PDA staff  
20 need to go to collect damage information.

21 Typically, when the state and the  
22 team go to a community, the first stop is with

1 the community officials to get a better  
2 indication from the community officials where  
3 to look for damage. And then it's merely a  
4 preliminary damage assessment to look at the  
5 damage size, magnitude and scope of that  
6 disaster.

7 So the inspector is going to go  
8 out, look at the homes that were damaged.  
9 They don't go in and do a detailed inspection.  
10 They go in and make a determination whether or  
11 not it was major, minor or destroyed damage  
12 based upon what they see. That information is  
13 then coordinated with the state because the  
14 state is in partnership all along throughout  
15 this process. And then the state will make a  
16 determination as to make a request for  
17 declaration from the President.

18 Q. Do you know who the PDA team was  
19 that went out to investigate for Disaster  
20 1780?

21 A. I do not know.

22 Q. How would you find out?

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1           A.       I would have to call down to  
2       Region 6 of which is the region overseeing the  
3       State of Texas and find out who headed up that  
4       team, how many teams were deployed and the  
5       areas that they visited. I do know that they  
6       visited the three counties that were declared,  
7       and that was supported by the request from the  
8       state.

9           Q.       Please look at Document 5122 and  
10       23. I want to begin by just asking whether  
11       you know what this form of document is. It  
12       should be in -- you filed it as 78-9. And I  
13       think it's also in, another version of it is  
14       around Page 100 of your Bates numbers. But  
15       that's slightly different than this one. It  
16       probably won't matter.

17           A.       I've reviewed this document.

18           Q.       Do you know what the document is  
19       that is at 5122 and 5123?

20           A.       I believe this is a summary sheet  
21       produced for the contractors' briefing that  
22       gives all the particulars for this event and

1 sets a course in terms of, I mean it talks  
2 about what was declared, are they anticipating  
3 any additional areas to be declared, what are  
4 some of the potential concerns, are there  
5 language concerns. It's a snapshot of what  
6 was looked at through the PDA process and then  
7 the declaration process.

8 It also says here that the  
9 declared date was July 24th but IA, Individual  
10 Assistance, programs was added on July 31st  
11 which would mean that Public Assistance was  
12 most likely declared first, and then because  
13 the preliminary damage assessments weren't  
14 completed or the states hadn't made a request  
15 for IA that they did an additional preliminary  
16 damage assessment to support the state's  
17 request to add IA programs.

18 Q. So that document that's Page 5123  
19 was produced after the PDA was done.

20 A. Typically, yes, because it's  
21 typically produced when the disaster is  
22 declared. So it's not produced because the

1 PDA is done. It's produced when the disaster  
2 was declared to give a snapshot of the  
3 information that's been gathered through PDA,  
4 through the region. And it also says down  
5 here, I believe, you know, who was assigned  
6 for the inspections. This was produced by the  
7 contractor, the Inspection Services folks for  
8 the contractors' briefing.

9 Q. What documents are created to  
10 describe the PDA?

11 A. There is a PDA manual that  
12 describes how to conduct a PDA. There is  
13 also, the process for a PDA is that if an  
14 event happens in a state and the state feels  
15 as though it's beyond their capability, the  
16 state will coordinate with the region to say  
17 that "We want to send out PDA teams." The  
18 region would say, "Are you looking at Public  
19 Assistance or Individual Assistance," because  
20 they would be different teams that would be  
21 going out.

22 And if the state would say that



1 "We want to set up teams to go out and look at  
2 three counties. We may look at more. We're  
3 still collecting information. So I'm looking  
4 for three teams and they'll begin on this  
5 coming Monday and could you have three teams  
6 ready to support us in this preliminary damage  
7 assessment," the region would say, "Yes, and  
8 where would you want to meet?" And then they  
9 would meet up with the state, go over the  
10 particulars for what the state knows at that  
11 time.

12 Typically, they're going to also  
13 ask the state, "We're here to look at all  
14 damages." And a lot of times the state may  
15 say, "Well, we're still receiving reports from  
16 several counties but right now we want to go  
17 out and look at these particular counties,"  
18 and the teams would meet up with the state.  
19 They would all go out to the affected county,  
20 meet up with the local person, get more  
21 information about the types of damages that  
22 they've seen, where to go, where the locations

1        were, and then they would all go out to view  
2        that damage.

3                Once that damage is collected,  
4        it's collected on like tick sheets. We used  
5        to call them tick sheets which would indicate  
6        category of damage, whether or not it was a  
7        single family home, a mobile home,  
8        condominium, multifamily home, the address,  
9        the location, and then the category of damage.  
10       And I say category because it's not an  
11       inspection on the particulars to that  
12       structure. It's basically a category of  
13       damage of major, minor or destroyed or  
14       inaccessible. And if they can't get to the  
15       area, it would be marked as inaccessible.

16               All of that would then be gathered  
17        however long the PDA process takes. Sometimes  
18        it might take one to three days. Other times  
19        it might take longer. If the state wants to  
20        look at other counties or other areas of  
21        damage, that's an ongoing process while the  
22        PDA team is out. And then all the information

1 is put together and the information is  
2 provided to the state.

3 The state would do a write-up to  
4 the President or to the region asking for --  
5 to the President but asking for a major  
6 declaration. They would describe the event,  
7 the duration of the event, the beginning of  
8 the event and whether or not the event is  
9 continuing or if there was an end date to the  
10 event, what counties they're looking for, and  
11 what assistance they're looking for.

12 That goes to the region. That  
13 goes to Headquarters and goes to the region.  
14 The region then writes up a report on their  
15 recommendation based upon the state's request  
16 and then it gets forwarded to Headquarters of  
17 which it then goes through a whole other  
18 process through the declarations unit.

19 It's also reviewed by the programs  
20 to determine whether or not it is supported by  
21 Headquarters on whether or not to support the  
22 recommendation from the region based upon the

1 request of the state.

2 Q. The state has the option of  
3 involving the regional teams in preparing the  
4 PDA. Correct?

5 A. It's not so much an option. The  
6 information needs to be collected. And it's  
7 collected jointly to support the state's  
8 request. So in other words, and according to  
9 the 44 CFR on the declarations process, the  
10 state needs to verify the damages in order to  
11 make a request. And what they do is they do a  
12 preliminary damage assessment. And they will  
13 seek assistance from FEMA to also conduct that  
14 preliminary damage assessment. FEMA then  
15 typically also involves the Small Business  
16 Administration to look at business damages  
17 since FEMA does not cover business damages.

18 Q. So it's not accurate to say that  
19 in smaller disasters the states will do the  
20 PDA themselves and send them to the President.  
21 They'll always involve FEMA to do the PDA even  
22 in the smaller disasters.

1           A.       It would still need some  
2 validation from FEMA before it goes to the  
3 President for determination.

4           Q.       Now, deferred maintenance is also  
5 an issue in Public Assistance. Correct?

6           A.       I'm not familiar. I mean I  
7 mentioned earlier that I worked in Public  
8 Assistance. It was in 1993. So a lot of  
9 things have changed in Public Assistance since  
10 then. So I'm not as familiar anymore with how  
11 they conduct their business in Public  
12 Assistance.

13          Q.       So you don't know how deferred  
14 maintenance is considered in what Public  
15 Assistance can be provided in repairing public  
16 buildings.

17          A.       Correct.

18          Q.       Is it accurate to say that  
19 buildings, whether they're private or public  
20 that are not individual residences, office  
21 buildings, shopping centers, courthouses, all  
22 kinds of buildings, they typically have

1 maintenance records associated with them  
2 because they've got supervision that's more  
3 formal than an individual's residence? Is  
4 that accurate?

5 A. I would say that's accurate.

6 Q. Now, some insurance companies  
7 require like a building maintenance log as a  
8 condition of insurance. Right?

9 A. I believe so.

10 Q. In the preliminary damage  
11 assessment based on the population of the  
12 counties for which assistance is requested or  
13 the declaration is requested, and based on the  
14 number of minor homes damaged and homes  
15 suffering major damage, does FEMA come up with  
16 an amount that it expects to spend in IA?

17 A. In terms of dollar amount?

18 Q. Yes.

19 A. There is formulas that are  
20 identified in the Code of Federal Regulations  
21 and the declaration that are guidelines.  
22 They're dated. I believe they're from 1990.

1 But FEMA does not put, necessarily put dollar  
2 amounts. That is part of the regional  
3 write-up. But there is no threshold or  
4 standard of which FEMA would apply a dollar  
5 amount for Individual Assistance.

6 Public Assistance, according to  
7 the Code of Federal Regulations, does set  
8 guidelines for dollar amount thresholds per  
9 capita costs. Individual Assistance does not  
10 provide such per capita dollar amounts.

11 Q. When you say threshold, do you  
12 mean like a quota as far as an amount that  
13 FEMA expects to pay for Individual Assistance  
14 for this disaster?

15 A. No, no. It's not a quota. It's  
16 not a threshold. For Individual Assistance  
17 based upon the major/minor destroyed damage,  
18 we start looking at what some of the potential  
19 program costs could be. That is no way  
20 binding in any way. It's a benchmark for how  
21 big we think the disaster is going to be and  
22 the expected Federal assistance required to

1 support the recovery of individuals. It is  
2 not binding in any way.

3 Q. But that's a number that FEMA  
4 Headquarters is very interested in for a major  
5 disaster, right? They want to know what their  
6 exposure is and whether they're going to have  
7 to go to Congress for appropriations, right?

8 A. Well, they want to know but it's  
9 not -- what's more important is the magnitude  
10 of the disaster, the homes destroyed, what is  
11 it that Federal Government can bring to assist  
12 in the recovery. So I mean this information  
13 is required. It's in the templates that are  
14 provided that we need to come up with what the  
15 estimated program costs are.

16 The reason why we look for that is  
17 because it also helps FEMA to know how to  
18 staff that disaster. If we know that we're  
19 going to have an awful lot of people that are  
20 eligible for other needs assistance, you know,  
21 is it also helps the state. The Other Needs  
22 Assistance Program can be administered



1 different ways. And if there's going to be an  
2 awful lot of people eligible for the Other  
3 Needs Assistance Program and it happens to be  
4 a state-run program, that information would be  
5 used to support the state and what some of the  
6 staffing requirements would be. It's a  
7 benchmark. It's an indicator to know how we  
8 should manage that disaster.

9 Q. And are statistics prepared that  
10 compare disasters to one another? For  
11 example, this many people lived in the  
12 declared counties and this was the average  
13 amount that was provided on a per capita  
14 basis. Are those types of statistics  
15 maintained by disaster?

16 A. Not on a per capita basis. In  
17 other words, there is information -- again,  
18 are we talking preliminary damage  
19 determination or post-declaration, post-award?

20 Q. Actually, thank you for that  
21 clarification because I did mean post, actual  
22 performance. And the question is, broadly,

1 after the disaster is concluded, what  
2 statistics are maintained to compare payments  
3 by disaster, across disasters?

4 A. I'm carefully picking this only  
5 because, are you talking about comparison of  
6 disaster to disaster or comparison of that  
7 disaster as it related to the preliminary  
8 damage assessment for that event?

9 Q. Both.

10 A. Okay. Because FEMA has been doing  
11 a lot of work in trying to look at improving  
12 our PDA process so that in an event that was  
13 declared, we are now looking at what's the end  
14 result of that disaster in terms of the amount  
15 of people that applied for assistance, the  
16 category of damage, the dollar amount, how  
17 does that compare to the preliminary damage  
18 information that actually was used for the  
19 state to request their declaration.

20 We are doing some of those  
21 comparisons now. We typically don't look at  
22 comparison of post-disaster to post-disaster

1 statistics. We don't say, "Okay, you know,  
2 these three counties in California compared to  
3 these three counties in West Virginia." We  
4 don't necessarily do those comparisons.

5 What we do do, however, is if  
6 there are repeat disasters within the same  
7 state, we would want to know what counties  
8 were declared in previous events. And one of  
9 the reasons for doing that is we have certain  
10 requirements of which some requirements for  
11 assistance would be placed on the individuals  
12 such as if they are in a special flood hazard  
13 area, they have to purchase and maintain flood  
14 insurance. If they do not maintain flood  
15 insurance, they are not going to be eligible  
16 for any future disaster assistance for  
17 insurable items.

18 So we would want to know in  
19 comparison when was the last disaster declared  
20 so that we can start comparing how many flood  
21 insurance policies were issued and things of  
22 that nature. But we typically don't say,

1 "Well, how much did they get last time versus  
2 how much are they going to get this time?"  
3 It's very disaster specific.

4 Q. One of the maps that PaRR  
5 generated, it shows a geographic map of the  
6 declared areas and it shows dots where all the  
7 inspections were performed. What other maps  
8 are maintained about the disaster? For  
9 example, is there a map that shows where money  
10 was provided, the houses where repair  
11 assistance was provided?

12 A. In terms of a standard map?

13 Q. Is it something that FEMA  
14 generally produces? Like do you have a map,  
15 "These dots are the areas where we provided  
16 assistance." Let me find this other map and  
17 I'll see if I can be clear.

18 A. The reason I asked the question is  
19 because my experience working in the field is  
20 that where the Federal Coordinating Officer  
21 holds his daily briefings with all of his  
22 management staff along with the state, they

1 usually like to decorate the walls with  
2 various types of maps that would show any  
3 number of different informational points. In  
4 other words, they could put red dots to show  
5 where the inspections have taken place. They  
6 could also indicate dollar amounts disbursed,  
7 inspectors out there.

8 That's a typical map that we may  
9 see in the senior conference room for the FCO,  
10 so that it provides a visual to see where the  
11 concentrated inspections are going to be.  
12 This is something that is not standard. It  
13 could be done. It's done often, but the  
14 information being requested is going to change  
15 depending upon what the FCO would like to see  
16 hung up in the conference room.

17 Q. And when you say "that," you're  
18 looking at Page 1901.

19 A. I'm sorry. Yes.

20 Q. Now, just to be clear, you are  
21 saying that the FCO could ask for a map like  
22 this one in 1901 that provided a geographic

1 breakdown of where assistance was denied and  
2 where assistance was provided.

3 A. It's typically where it's  
4 provided. And I say that because that's what  
5 FEMA is interested in based upon our  
6 regulations, how much assistance was provided  
7 for eligible categories of damage. So I'm  
8 trying to recall if I've ever seen a map  
9 simply identifying where assistance is denied.  
10 I don't recall that, seeing maps like that.

11 Q. But presumably if NEMIS could  
12 generate the data that would be necessary to  
13 provide a map of where assistance was  
14 provided, they could do it on ineligibles as  
15 well.

16 A. It could be provided. I've just  
17 never seen one.

18 MS. WELLS: Let me just clarify  
19 for the record that the map that's shown in  
20 Document 1901 is not either of the maps that  
21 you've just been talking about, right? This  
22 shows something else.

1 MR. WESEVICH: The map in 1901, as  
2 I understand, from Page 1900, that this shows  
3 where inspections were conducted.

4 MS. WELLS: Right. It doesn't  
5 show who received benefits and who didn't.

6 MR. WESEVICH: Correct.

7 MS. WELLS: Yeah.

8 THE WITNESS: I might also add  
9 that different maps are produced for different  
10 reasons. If we see a concentration of  
11 applications -- and that is another map I see  
12 frequently is where are people applying from,  
13 what counties.

14 A lot of times that information  
15 might be used in community services, community  
16 relations because we have teams of people  
17 going out to the affected communities and  
18 reaching out to the individuals, asking them  
19 to apply, finding out how they are doing, have  
20 they received assistance, have they contacted  
21 the voluntary organizations, and point them in  
22 the system in different directions.

1           If we see areas where there's a  
2           concentration of registrations and we haven't  
3           sent teams out there, some maps are used to be  
4           able to point people in different directions,  
5           saying that could you go visit, you know, this  
6           area of the community where we didn't have  
7           teams out there yet.

8           So there's various reasons why  
9           different maps uphold. It primarily shows up  
10          in the FCO conference room, though, Federal  
11          Coordinating Office's conference room.

12           Q.       And where would that be?

13           A.       In the joint field office  
14          established out in the field within the  
15          affected area to run that disaster.

16           Q.       Because before, we had looked at  
17          the September 3 ineligibles report where it  
18          said that there were 14,900 ineligibles that  
19          could be habitability or deferred maintenance.  
20          The question is if you wanted to know where  
21          all those deferred maintenance denials were  
22          concentrated, could you have made a map?



1 MS. WELLS: Object to the form of  
2 the question.

3 THE WITNESS: Yes, but it would be  
4 based upon the ineligibility call.

5 BY MR. WESEVICH:

6 Q. Correct.

7 A. So in other words, we could ask  
8 that information, but I guess my question  
9 would be why.

10 Q. Is one reason why FEMA might want  
11 that information so that it could send out  
12 someone from the field office -- and we'll  
13 talk about who in a minute -- to check in high  
14 concentration areas whether this is deferred  
15 maintenance?

16 A. No. We've already sent our  
17 inspector out there who made that  
18 determination that it was either ineligible  
19 for insufficient damage or deferred  
20 maintenance. So we've already sent out the  
21 subject matter expert to go out and look at  
22 that. Now, we would have, typically already,

1 have had community relations staff throughout  
2 the areas, you know, assisting people in  
3 applying, telling them how to apply, and  
4 explaining basic steps of what to expect once  
5 they apply.

6 But we wouldn't send anyone else  
7 out to try to second-guess what an inspector  
8 has already determined based upon their  
9 expertise of going in and actually viewing the  
10 damage, meeting with the applicant and going  
11 into every room and looking at the house in  
12 its entirety for habitability issues.

13 Q. But if FEMA was concerned about  
14 the high incidence of deferred maintenance  
15 denials, it would have an easy way to find out  
16 where those denials were concentrated.

17 MS. WELLS: Object to the form of  
18 the question.

19 THE WITNESS: There is a way that  
20 it could be depicted on a map if that's what  
21 you are asking.

22 BY MR. WESEVICH:

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1           Q.       This is hard to read. We're  
2       looking at Page 597. Let me see if I can blow  
3       it up some.

4                   Do you know why there were 29,000  
5       initial inspections out of 38,000  
6       applications, why there would have been 9,000  
7       applications without an initial inspection?

8           A.       There is a report that would tell  
9       me if I asked for the report. There's any  
10      number of reasons why they may not have been  
11      issued for an inspection.

12          Q.       Renters being the primary one.

13          A.       No. Renters would be inspected.  
14      A business may call up. They wouldn't get an  
15      inspection. If they were outside a designated  
16      area, as I mentioned previously this morning  
17      that a registration would be taken but it  
18      wouldn't go into the queue for processing or  
19      inspection. So there are any number of  
20      reasons why -- and it's pretty typical that we  
21      have more applications than we have  
22      inspections.

1 Q. By 30 percent?

2 A. It depends on the area. It  
3 depends on the type of event. It depends on  
4 the designated areas.

5 Q. Okay. So the 14,900 IID denials,  
6 that would mean that it's half of all the  
7 people who are eligible for repair assistance  
8 since there were only 28,000 initial  
9 inspections. Is that accurate?

10 MS. WELLS: Object to the form of  
11 the question.

12 MR. WESEVICH: I'm sorry?

13 MS. WELLS: I'm going to object to  
14 the form of the question. You said that half  
15 the people who were eligible for repair  
16 assistance.

17 MR. WESEVICH: I misspoke. I  
18 apologize.

19 MS. WELLS: Okay.

20 BY MR. WESEVICH:

21 Q. So you see that this indicates  
22 that there were 8,500 people who were found

1 initially eligible for home repair out of  
2 28,000 of initial inspections. I'm looking at  
3 Items L and C.

4 A. Number of initial home repair,  
5 8,550, and you are comparing it to C?

6 Q. Yes, sir.

7 A. The number of initial inspections,  
8 28,000. Yes, that is correct.

9 Q. And does that number strike you,  
10 that 22 percent of applicants would be found  
11 initially eligible for home repair, does that  
12 strike you as a low number?

13 A. Potentially. But I've also seen  
14 other disasters where numbers are extremely  
15 low for any number of reasons as well. So I  
16 mean it's something that it might be but until  
17 I know the reasons why, which was identified  
18 in the ineligibility report, it may or may not  
19 raise a lot of red flags.

20 Q. But it would raise enough red  
21 flags to get FEMA to try to understand what  
22 the reason was.

1           A.       As I say, that would be typically  
2       reviewed at the field office of which  
3       monitoring does take place. And they would be  
4       contacting the NPSC to find out, "Why do we  
5       have such a high ineligibility rate?"

6           Q.       Is that a yes? My only question  
7       is would this number, 8500 out of 28,000  
8       initial inspections be enough of itself to  
9       raise red flags to cause FEMA to try to  
10      understand why?

11          A.       Potentially. It's not a yes or  
12      no. If I were out there and I was overseeing  
13      Individual Assistance, it may raise enough red  
14      flags that I would make calls to find out why  
15      it's ineligible. Now, we did show up here  
16      earlier an ineligibility report that's  
17      available to the field office. And whether or  
18      not they questioned it, I don't know.

19          Q.       Okay. You've had 21 years  
20      experience at FEMA?

21          A.       Yes, I have.

22          Q.       So for you would this raise a red

1 flag and cause you to find out why?

2 A. I would find out why. And that  
3 could be articulated verbally.

4 Q. On the next page on 598, it says  
5 that zero were marked as the cause of damage  
6 due to deferred maintenance.

7 A. That's what it says, yes.

8 Q. Okay. Now, deferred maintenance  
9 is one of the lists, one of the causes of  
10 damages in the line items.

11 A. Yes.

12 Q. Is that correct?

13 A. I believe, yes. In the ACE  
14 software system, yes.

15 Q. And is this something that's  
16 separate from the areas of deferred  
17 maintenance?

18 A. No.

19 Q. That's the only place where it's  
20 listed.

21 A. That's my knowledge, yes.

22 Q. So is this number reporting that

1 no deferred maintenance was checked on the  
2 individual applications?

3 A. No. It's saying here that -- it's  
4 saying that they didn't describe it as the  
5 cause of damage which doesn't mean that they  
6 didn't have deferred maintenance. The typical  
7 causes of damage is going to be tornado,  
8 severe weather, hurricane, wind-driven rain.  
9 Those are your typical causes of damage.

10 Q. If you look at the Item N, it says  
11 11 appeals resulted in eligibility for  
12 repairs? That's at the top of 598.

13 A. Yes.

14 Q. Does that number strike you as  
15 low, 11 appeals secured repair assistance out  
16 of 28,000 initial inspections?

17 A. No, it wouldn't, only because if  
18 the inspector did a thorough job, it simply  
19 means that in 11 cases that were appealed,  
20 there was sufficient information either  
21 provided by the applicant to warrant a second  
22 inspection which overturned the first



1 inspection or found additional damages that  
2 could still have found deferred maintenance  
3 but found additional damages that was  
4 overlooked by the initial inspection.

5 So what this actually tells me is  
6 that the inspectors did a thorough job.

7 Q. But would this raise any red flags  
8 for you, seeing 11 changes?

9 A. No. If anything, it would raise  
10 the issue that the inspectors did a thorough  
11 job. I would be more concerned if I saw an  
12 awful lot of appeals overturned. That would  
13 raise an issue to say what was missed, what  
14 was not considered when the inspectors went  
15 out. But with a very low number of overturned  
16 appeals tells me that the inspectors did their  
17 job.

18 Q. Is the task monitor in charge of  
19 the field office?

20 A. No. They are in charge of the  
21 task order to the contract, contractors.

22 Q. Is the FCO in charge of the field

1 office?

2 A. The Federal Coordinating Officer  
3 is in charge of the field office along with  
4 the state coordinating officer.

5 Q. This is that screen that you had  
6 referred to earlier, the areas of deferred  
7 maintenance. We're looking at Page 621. This  
8 does not have the bar over here that you had  
9 talked about.

10 A. Yes.

11 Q. It doesn't have that. But roof  
12 isn't listed as an area of deferred  
13 maintenance on this Page 622, is it?

14 A. No, it isn't because, again, we  
15 don't require inspectors to get up on the  
16 roof. They would look at what damages from  
17 the interior that could weigh decision on what  
18 the roof is that we explained earlier between,  
19 you know, any water intrusion, age of the  
20 water spots, and things of that nature. But  
21 we do not require an inspector to get up on  
22 the roof.

1 Q. Does this list ever change of  
2 areas of deferred maintenance?

3 A. I haven't seen -- no. it's pretty  
4 static. I don't recall it changing since it's  
5 been added to the ACE software. I mean there  
6 was the big change when it was added to the  
7 ACE software as a separate window as opposed  
8 to being in comments. I don't recall it  
9 changing since then because those were  
10 overarching areas associated with a structure.  
11 So those typically would not change.

12 Q. Well, these are, the areas of  
13 deferred maintenance is that they are the  
14 headings, as far as I can tell, they are the  
15 headings of the real property line items.

16 A. That's correct.

17 Q. I'm looking at Page 614. See  
18 these, and I'm pointing to the inspection item  
19 category. They're all under headings, and  
20 those correspond to the areas of deferred  
21 maintenance.

22 A. Typically, yes, because these are

1 the headings that, under each of these  
2 headings there is several different line items  
3 that would relate to that particular heading.  
4 So when you're looking at deferred maintenance  
5 you're not looking at line item deferred  
6 maintenance. You're looking at the general  
7 category and area of deferred maintenance. So  
8 they take the headings to know what typically  
9 falls under that heading as an area of  
10 deferred maintenance.

11 Q. And those areas are the same as  
12 the inspection item categories on Page 614, as  
13 shown in 614.

14 A. Pretty much the same. I also see  
15 in this heading "Speed Estimating," which is  
16 not a heading in the deferred maintenance  
17 area. But they are generally the same  
18 headings.

19 Q. The line items that are listed  
20 under "Inspection Items"?

21 A. Yes.

22 Q. Are those the items that are

1 further described by this document 1094,  
2 that's before and after ten-ninety -- the IHP  
3 line item descriptions that begin at 1081 and  
4 1082?

5 A. Yes. Those line item descriptions  
6 correlate to the line items within those  
7 categories identified on the previous page.

8 Q. Page 621.

9 A. Yes.

10 Q. How does the inspector access  
11 these line item descriptions?

12 A. I believe there are drop-down  
13 menus now built into the palm pad that gives a  
14 description of that particular line item.  
15 There's a help screen or a drop-down that  
16 allows that.

17 Q. Let's see if we can see it.

18 A. There was a help box if you want  
19 to go back a couple.

20 Q. This is on the calculator. This  
21 is on the line items. We were talking about  
22 Page 614. Where is the help box? Oh, is it

1 right here?

2 A. Yes.

3 Q. And that's where you would access  
4 the line item descriptions that we saw in  
5 1081?

6 A. I believe so. I do know that they  
7 have added those line item descriptions that  
8 if the inspector is having trouble to remember  
9 exactly what a particular line item is, it is  
10 available on the palm pad.

11 Q. But you believe that it's where it  
12 says "Help" in the upper left-hand corner of  
13 the Windows screen that's on Page 614?

14 A. Yes. But also, you'd have to go  
15 into the rooms themselves and then you would  
16 be able to access what line items would be  
17 there. But yes, you could do that.

18 Q. But I'm just saying if you wanted  
19 the broader descriptions of the line items  
20 that are contained in that list that begins on  
21 Page 1081, you would go to this "Help" or to  
22 some button that's on this Page 614.

1           A.       You would go to some button within  
2       this ACE software and find that information.  
3       I believe there's also a "Help" button down in  
4       that corner. That may also get you to that  
5       particular area for further description. It's  
6       covered by the FEMA 000614. I believe there's  
7       another button that will allow us to seek help  
8       in describing what some of these line items  
9       may be.

10           Q.       You're looking at Page 6415. You  
11       don't have that in your printed documents.  
12       Could you look at this and I'll ask a couple  
13       questions about it. There's another page to  
14       it, so if you'd let me know when you finished  
15       reading this 6415, I'll flip the page.

16           A.       Okay.

17           Q.       Have you had a chance to read that  
18       article?

19           A.       Yes, I have.

20           Q.       FEMA watches the press. Correct?

21           A.       Correct.

22           Q.       And you've got press officers that

1       see what's written about FEMA.

2               A.       Correct.

3               Q.       And you've seen that in disasters  
4       across the country people have complained  
5       about the vagueness of this deferred  
6       maintenance standard. Is that accurate?

7               MS. WELLS: Object to the form of  
8       the question.

9               THE WITNESS: That's what's being  
10      articulated in this article, yes.

11              BY MR. WESEVICH:

12              Q.       But have you seen that from across  
13      the nation, that these complaints have come in  
14      about people not understanding how this  
15      deferred maintenance idea works?

16              A.       I've seen many different articles,  
17      some of which just described that FEMA denied  
18      assistance not particular to deferred  
19      maintenance. This particular article really  
20      focuses in on deferred maintenance which  
21      doesn't go out in any of our letters. So  
22      where they're getting their information on



1 deferred maintenance, I'm not aware of.

2 Q. You see in the beginning of the  
3 article, 6415, it says, in the fifth paragraph  
4 down the applicant states that "They said they  
5 couldn't tell what was damaged before and  
6 after, so they denied assistance based on  
7 deferred maintenance." Is that the way you  
8 understand that it works?

9 A. No, it isn't.

10 Q. Does FEMA think that its  
11 procedures for discerning deferred maintenance  
12 are adequate and does it intend to look at  
13 this question about how to do a better job of  
14 discerning what is deferred maintenance?

15 A. Yes. Yes, we are, because  
16 deferred maintenance is a term typically used  
17 in the building trades. We're trying to  
18 better describe what it is that FEMA does by  
19 staying with what the actual language is  
20 within the 44 CFRs, which is typically was it  
21 disaster related; and if it wasn't disaster  
22 related, then it wasn't disaster related or

1       made worse by the event.

2               So FEMA is trying to clarify more  
3       of what the intent of FEMA programs are as  
4       opposed to using terms such as "deferred  
5       maintenance" or "preexisting condition."  
6       Everything in the 44 CFR and in the authority  
7       itself only determines what FEMA would pay for  
8       based upon eligibility and based upon  
9       habitability and based upon disaster-related  
10      damages. So we are trying to improve the way  
11      we describe disaster-related damages and the  
12      damages that weren't disaster related.

13             Q.       I hear you saying that FEMA  
14      believes it's necessary to better describe  
15      what it does. Is that accurate?

16             A.       Yes. FEMA is always trying to  
17      improve on communication and articulation as  
18      to what it is FEMA actually can provide. It's  
19      an evolving, constant improvement that we try  
20      to impose and implement.

21             Q.       And does FEMA believe -- I mean is  
22      FEMA reviewing its methods for discerning what

1 is a preexisting condition and what is  
2 disaster related when there's dual causation?

3 A. Dual causation as it refers to?

4 Q. When it's not clear what was  
5 preexisting and what was disaster related.

6 MS. WELLS: I'm going to object to  
7 the form.

8 THE WITNESS: FEMA is always  
9 trying to improve how we articulate what it is  
10 people can be eligible for. In other words,  
11 all the regulations and all of our guidance is  
12 trying to stick with what FEMA will pay for.  
13 Years ago FEMA didn't necessarily do an  
14 inspection of an entire house. They simply  
15 went to where damages occurred and captured  
16 those damages.

17 Now FEMA is requiring all  
18 inspectors to do a thorough inspection of the  
19 house, a complete inspection, go into every  
20 bedroom, every hallway, you know, kitchens,  
21 bathrooms, basements, to capture whether or  
22 not damages occurred as a result of the

1 disaster so that it will cut down on appeals  
2 or second inspections based upon appeals if  
3 people say, "You didn't address my bedroom in  
4 the back." FEMA can now say, "Yes, we had an  
5 inspector go in and recorded no damages."

6 So we are always trying to improve  
7 how we capture information and how we  
8 articulate information in the correspondence  
9 letters that go out to individuals based upon  
10 what FEMA's programs are intended for.

11 BY MR. WESEVICH:

12 Q. Please look at Page 4605.

13 A. What document is that?

14 Q. You guys filed it as document

15 36 --

16 MS. WELLS: It's not going to be  
17 in there, I don't think.

18 MR. WESEVICH: -- 36-3 and 36-4.  
19 The Court stamp is not on that one. I don't  
20 know why. I think the page service started to  
21 stamp all those documents.

22 THE WITNESS: Yes.

1 BY MR. WESEVICH:

2 Q. So you've had a chance to read  
3 Pages 4605 and 06?

4 A. Yes, I have.

5 Q. At least in 2009, some efforts  
6 were underway at FEMA to refine the policies  
7 that are used to administer individual  
8 assistance.

9 A. It was to rewrite the regulations  
10 in support of Section 408, yes.

11 Q. And that has not been done yet.  
12 Correct?

13 A. It's still being pursued.

14 Q. And my only question is is the way  
15 that inspectors are expected to judge deferred  
16 maintenance one of the items that's to be  
17 addressed in those regulations?

18 A. Not in this particular regulation.  
19 This is the overall IHP regulation, the rule.  
20 And this is based upon the current regulations  
21 that were considered interim regulations  
22 published in 2002. So this is a complete

1       rewrite of those regulations to also address  
2       the Post-Katrina Emergency Management Reform  
3       Act issues that were raised. So this is the  
4       overarching document in support of rewriting  
5       our entire regulation, Section 206.

6               Q.       Correct. And there were statutory  
7       changes that were required by the  
8       Post-Katrina--

9               A.       Correct.

10              Q.       -- statute. But the question is  
11       as part of that, are any policy changes  
12       included in that for the way that deferred  
13       maintenance is judged?

14              A.       No, since deferred maintenance is  
15       not part of the regulation.

16              Q.       We've said several times that  
17       FEMA's instructions to contractors are that a  
18       preexisting condition has to be significantly  
19       worsened by the disaster for it to be recorded  
20       as a line item that FEMA will pay for. That's  
21       correct?

22              A.       If it affects the habitability of

1 the home, yes.

2 Q. Yes. But FEMA doesn't provide  
3 contractors with any guidance at all anywhere  
4 about how to judge what is significantly  
5 worsened.

6 A. No. What it does is it provides  
7 the guidelines on looking at the  
8 disaster-caused damage, disaster-related  
9 damage caused by the event and if there is  
10 damage that exists that is caused by the  
11 event, then the inspector will record that.  
12 It does not get into the opposite of that  
13 which is to look at deferred maintenance and  
14 make a judgment call. It's to focus on what  
15 they're supposed to be doing in categorizing,  
16 in verifying disaster-related damage.

17 MR. WESEVICH: Can I take about  
18 ten minutes? I think that we're almost done.

19 (Recessed from 4:51 to 5:09 p.m.)

20 BY MR. WESEVICH:

21 Q. I just have a very few follow-up  
22 questions.

1                   We had talked about those numbered  
2 policies at the very beginning, that there was  
3 one central location for the PA policies, but  
4 there wasn't for the IA policies. And as I  
5 recall, your answer was that you would go to  
6 the Intranet, someplace on the Intranet to  
7 find the IA policies.

8                   A.       Yes.

9                   Q.       The complete group of them.

10                  A.       Yes. They could be found on the  
11 Intranet.

12                  Q.       And do you believe that you know  
13 where to look for all of them?

14                  A.       My primary source for that for  
15 individual policies affecting what we've been  
16 talking about today, which is 408 assistance,  
17 would be the NPSC website. That would be my  
18 primary location. There are several other  
19 locations that I could go through through our  
20 policy and planning folks, going through our  
21 other staff who maintain them. But if I am at  
22 my computer and I need it quickly and if I



1 don't already have it on my computer, I would  
2 go to the Virginia NPSC website.

3 Q. But if you wanted to be sure that  
4 you had all of them, where would you go?

5 A. I would actually go to another  
6 section because we've been through a routine  
7 over the past year and a half of collecting  
8 all of our disaster-specific guidance and  
9 policy documents, because we're in the process  
10 of trying to update those and rescind and  
11 sunset some of the disaster-specific guidance  
12 policies. So we've gone through over the past  
13 year an effort of consolidating all of the  
14 policy and guidance descriptors in one  
15 location. And that's in our Policy, Planning  
16 and Doctrine Branch within Individual  
17 Assistance.

18 Q. How many are there of those  
19 policies? Are there 10,000 or are there  
20 1,000?

21 A. I can't remember what the last  
22 count was. Again, this is everything that

1 we've had. And it was well over 100 different  
2 policies.

3 Q. And the PA guide that we looked at  
4 earlier today there were something like  
5 250-some, on that order.

6 A. Yes. I think there might even be  
7 more than that under Individual Assistance.

8 Q. But all of those policies have not  
9 been produced yet in the documents in this  
10 case. Right?

11 A. Some of them may not pertain to  
12 Section 408 assistance because we have other  
13 policies that pertain to other sections of the  
14 Stafford Act. We have policies that reiterate  
15 Part 9 regarding Executive Orders 11988 and  
16 11990 which deals with flood plain management.  
17 So they're not all particular to Section 408  
18 assistance, individual assistance.

19 Q. And is it your testimony that  
20 you're sure that you've produced already all  
21 of the policies that do pertain to 408?

22 A. Yes. To the best of my knowledge,

1 everything's been produced.

2 Q. How are you sure of that?

3 A. Because it was requested, and  
4 there aren't too many policies particular to  
5 Section 408. Most of our guidance is  
6 projected from the 44 CFR. So there is an  
7 awful lot -- there are policies. As you can  
8 see, those are some of the dated policies. As  
9 you see, that's a Disaster Recovery Center  
10 services provider's policy on Page 30 which  
11 doesn't necessarily reflect 408 assistance.  
12 But that is where people go to seek questions  
13 regarding Section 408 and the assistance  
14 provided.

15 So that has been provided even  
16 though it doesn't affect one's eligibility or  
17 one's determination for eligibility. It  
18 simply identifies that FEMA can set up these  
19 disaster recovery policies for individuals to  
20 go in and seek questions, answers, and talk to  
21 other Federal partners as well as state  
22 agencies to seek assistance. So everything

1       that was associated with Section 408, to the  
2       best of my recollection, has been provided.

3               Q.       And is there anywhere that has a  
4       Table of Contents for all of these numbered  
5       policies in the 9400 series, the  
6       DAP94-blank-blank?

7               MS. WELLS:   Objection; asked and  
8       answered.

9               THE WITNESS:   Yeah, there is.   I  
10       don't know where I could get my fingers on it  
11       because as we have also seen in previous  
12       documents, there were policy issues that do  
13       not have the numbering system on it.   So we do  
14       have a listing of policies but they're not all  
15       of this format.

16               BY MR. WESEVICH:

17               Q.       I show you what's been marked as  
18       5411.   This appears to be an interim handbook  
19       that was published November 2nd, 2002.   Do you  
20       know whether such a handbook still exists?

21               A.       I don't believe it's been updated.

22               Q.       Have you seen this document

1 before?

2 A. I do recall this document. There  
3 is now what's referred to as a tool kit that  
4 is online in the Internet -- Intranet, that is  
5 similar to this. This basically evolved into  
6 a tool kit which is a full description of the  
7 IA programs. So it talks a lot about IHP,  
8 ONA, crisis counseling, case management, DRCs.  
9 It's a tool kit that's involving every element  
10 of the program.

11 Q. Who uses the tool kit?

12 A. It's used for field staff. It's  
13 maintained by both field staff and  
14 Headquarters staff. It is updated to the best  
15 of our ability to update it. Sometimes we're  
16 not as diligent. I know it was updated last  
17 year, but we're not as diligent in making sure  
18 that every time a decision is made we run in  
19 and update that document. But for the most  
20 part it is updated.

21 Q. And it's available online where?

22 A. I believe it's on the Intranet and

1       it's available, I believe, on the website.  
2       But it's also something that we can send a  
3       link out to for individuals asking, you know,  
4       for the field offices asking for this. It's  
5       there and it's available.

6               Q.       Who participates in updating it?

7               A.       I have staff that work for me that  
8       work with the regions on issues to update.  
9       Prior to Headquarters also getting involved in  
10      maintaining and updating that, it used to be  
11      updated by regional office staff in Region 8.

12              Q.       And as I understand your  
13      testimony, this document here that was  
14      published as an interim handbook on November  
15      the 2nd, 2002 evolved into this field -- you  
16      called it a?

17              A.       Tool kit.

18              Q.       Tool kit.

19              A.       Yes. This was basically a  
20      handbook of all the various programs'  
21      processes, overarching descriptions of all the  
22      programs. The tool kit does the same thing.

1 And I believe that is -- this was prior to the  
2 tool kit.

3 Q. And the updates reflect policy  
4 changes made at Headquarters, FEMA  
5 Headquarters.

6 A. Not just policy changes. It's a  
7 more descriptive, more description of what the  
8 programs are, what the time lines are for the  
9 programs, overarching goals of the programs.  
10 It has checklists in there for setting up some  
11 of these components, the joint field office,  
12 the DRCs. It's a tool kit. It's getting into  
13 more detail a little bit about how we operate  
14 and where we operate and the components that  
15 we operate under.

16 Q. Is the tool kit available to PaRR  
17 and to PB?

18 A. I'm not sure if they ever asked.  
19 If they asked, it would be.

20 Q. What about to the public?

21 A. Again, I don't know if it's ever  
22 been asked. I don't think anything's

1       proprietary that's in there. And it is just  
2       basically reiterating a lot of descriptors and  
3       description of how we conduct business. It  
4       doesn't set policy or it doesn't set  
5       regulation. It's basically additional  
6       guidance.

7               Q.       Could you describe for me how it  
8       can be that an inspector could record line  
9       items of real property damage and yet repair  
10      assistance not be awarded? What are the  
11      circumstances in which that can happen?

12               MS. WELLS: I'm going to object to  
13      the form of the question.

14               BY MR. WESEVICH:

15               Q.       And I know you can't give me an  
16      exhaustive list at this hour.

17               A.       Right. It's pretty much going  
18      through everything we described. Basically,  
19      the inspector can record damages in line items  
20      but still have a habitability call of no. An  
21      example of that that I've experienced is in  
22      California when I did QC inspections in



1 1996-ish. It was after one of the earthquakes  
2 out there. And it was also heavy rain that  
3 accompanied. It was just timing.

4 And many homes got flooded but  
5 with only one inch of water. It didn't affect  
6 the habitability of the home but all the  
7 carpet had to be replaced. So there may have  
8 been damage that was recorded in line items  
9 but did it affect the overall habitability of  
10 the home? No. So they were not awarded  
11 assistance.

12 Q. And would that kind of a global  
13 call be made by somebody at FEMA Headquarters  
14 or where? That "These types of carpet damage  
15 we're not going to end up paying for when  
16 there's one inch of water."

17 MS. WELLS: Object to the form of  
18 the question.

19 THE WITNESS: It's part of the  
20 processing for that inspection. So unless you  
21 have tripping hazards as a result of the  
22 carpet not being there, it will not affect the

1       habitability of the home. So by replacing  
2       carpet, it doesn't affect the habitability.  
3       It could be a business rule that's established  
4       in NEMIS. It could be a rule that says,  
5       "We're not going to pay for carpeting."

6               We don't pay for wall covering as  
7       well. If there is water stains on the wall,  
8       we don't pay for paint because paint doesn't  
9       affect the habitability of the home. So there  
10      are certain elements that we just won't pay  
11      for because it doesn't affect the habitability  
12      of the home.

13             That's why, as I mentioned, the  
14      inspector is there to record damages. That's  
15      the main focus of what the inspector is to do.  
16      He does not make eligibility calls. He simply  
17      records damages as he or she sees fit based on  
18      what they are seeing in making the  
19      determination as to whether or not it is  
20      disaster related.

21             And then they make an overall  
22      habitability call as to whether or not the

1 damages that they are viewing affects the  
2 habitability of the home. That gets  
3 transmitted back up to NEMIS. And NEMIS,  
4 through auto-determination, will say that  
5 they're not eligible because it's safe to live  
6 in their home because it did not affect the  
7 habitability of the home.

8 BY MR. WESEVICH:

9 Q. We are looking at Page 269 here.  
10 There is a series of these types of manuals  
11 that have the large FEMA seal on the center of  
12 them. There's one on appeals. There's one on  
13 recoupment. There's one on case management.  
14 But it doesn't appear that we have the  
15 complete manuals of any of them. So can you  
16 look through the documents around there and  
17 tell me what are those manuals? What are they  
18 used for?

19 A. It would appear that this manual  
20 is part of a training manual. The reason for  
21 saying that is because it's saying that it's a  
22 module with objectives, and it's identifying

1        what the objectives are and understanding what  
2        this manual will do. And this is produced, I  
3        would assume, at the NPSC where recoupment is  
4        part of the process in the processing of cases  
5        or recouping funds based upon the case  
6        reviews.

7            Q.        Is it accurate that many of the  
8        NPSC employees are trained in multiple  
9        functions? Some of them are trained to handle  
10       appeals, some of them are trained to handle  
11       recoupment, some of them are trained to handle  
12       call center operations?

13           A.        Yes.

14           Q.        So there's a series of manuals to  
15       complete a training course in each of those  
16       functions. Right?

17           A.        Typically, yes.

18           Q.        And we do not have the complete  
19       manuals in the documents that were produced.  
20       We only have excerpts from those manuals. Is  
21       that right?

22           A.        I would have to look at all of the

1 different manuals to know whether or not it's  
2 complete. And since these are produced at the  
3 NPSC, I would probably need to -- here's  
4 another one on appeals.

5 Q. And what's the number, the chapter  
6 number on appeals?

7 A. Three.

8 Q. That's an important one. So we  
9 don't have anything. We don't have two or one  
10 on appeals.

11 A. No. This is in series. The  
12 chapter on recoupment is two. The chapter on  
13 appeals is three. So this appears to be in a  
14 larger manual of training material used. And  
15 these are the various sections within that.  
16 That's what I would surmise.

17 Q. Well, I wish you would look  
18 through those and let me know the answer to  
19 that because I think that there are several --  
20 what's that one? See, there's another one for  
21 supervisor review, and that's three. So it's  
22 not four. Do you see? You would expect that

1       one -- what page is that one, Bates page is  
2       that?

3               A.       320.

4               Q.       So you would expect Page 320 to  
5       say four if the appeals one was part three.  
6       So it's not clear to us whether we have those  
7       complete training manuals. And you can't tell  
8       based on flipping through the documents.

9       Correct?

10              A.       No, no, I can't.

11              Q.       Are inspectors instructed to  
12       record whether the owner constructed a house  
13       that is under inspection? Are owner-built  
14       houses subject to -- is that fact recorded in  
15       the inspection?

16              A.       No, it isn't.

17              Q.       They're not told to record that  
18       fact?

19              A.       Not that I'm aware of, no.

20              Q.       I thank you for your time.

21              A.       Thank you.

22                      MR. WESEVICH: Pass the witness.

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MS. WELLS:

Q. Mr. Carleton, I have one follow-up question.

A. Sure.

Q. I want to be clear for the record, so I would ask you to please describe your understanding of what constitutes an inspection.

A. What constitutes an inspection is it would start with an individual applying for FEMA assistance. In that application, a series of questions are going to be asked. And if the individual indicates that they had damage to their home, that would generate an inspection.

That application, information from that application would go over to the inspectors. It would then be issued to a field inspector in the field on a pen tablet. That inspector would then go and make an appointment with the applicant, meet them at

1       their residence, ask a lot of questions to  
2       verify information that they provided during  
3       registration.

4               And then the inspector would do a  
5       visual inspection of that entire house. It  
6       would be a complete inspection. So they would  
7       be required to look at the exterior, look at  
8       the interior, go in each of the rooms to  
9       include bedrooms, hallways, bathrooms,  
10      kitchens, basements, and record whatever  
11      damage they saw. They would record damage and  
12      make a call as to whether or not it was  
13      preexisting damage or as a result of the  
14      disaster itself.

15             They would then mark those line  
16      items. They would complete the inspection  
17      report. They would then make an overall  
18      habitability call for the home. And then that  
19      information would get uploaded back to the  
20      NPSC for processing in NEMIS.

21             NEMIS would actually determine  
22      eligibility. The inspector doesn't determine



1 eligibility. The job of the inspector is only  
2 to be the eyes and ears of FEMA to collect  
3 information that would then be processed, and  
4 an eligibility determination made. Once that  
5 inspection is completed, the inspector then  
6 closes out that inspection and moves on to  
7 another inspection.

8 So it's all left in the hands of  
9 the NPSC staff to process that information and  
10 determine their eligibility. And through the  
11 system, it would then generate a letter to the  
12 applicant describing what they are eligible or  
13 not eligible for and also describe what the  
14 appeal process is.

15 MS. WELLS: Thank you. That's it.

16 MR. WESEVICH: Thank you, sir.

17 (Whereupon, signature not having  
18 been waived, the deposition concluded at 5:34  
19 p.m.)

20 + + +

21

22

CERTIFICATE FOR READING AND SIGNING

I hereby certify that I have read  
and examined the within transcript and the  
same is a true and accurate record of the  
testimony given by me.

Any corrections I have listed on  
the separate errata sheet enclosed, indicating  
the page and line number of each correction.

-----  
John M. Carleton, Jr.

-----  
Date

## 1 CERTIFICATE OF NOTARY PUBLIC

2 I, Lynell C.S. Abbott, the officer  
3 before whom the foregoing deposition was  
4 taken, do hereby certify that the witness,  
5 whose testimony appears in the foregoing  
6 deposition, was duly sworn by me; that the  
7 testimony of said witness was taken by me in  
8 shorthand and thereafter reduced to computer  
9 type under my direction; that said deposition  
10 is a true record of the testimony given by  
11 said witness; that I am neither counsel for,  
12 related to, nor employed by any of the parties  
13 to which this deposition was taken; and  
14 further, that I am not a relative or employee  
15 of any attorney or counsel employed by the  
16 parties hereto, nor financially or otherwise  
17 interested in the outcome of the action.

18  
19 \_\_\_\_\_  
20 Notary Public in and for  
The District of Columbia

21 My Commission Expires:  
22 April 30, 2017

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